מדינת ישראל

משרדי הממשלה

משרד

מחלקה

אדמה בטירה שבנפת טול-כרם

מס' תיק

(١) [illegible] حسين فلول
(٢)

الشيخ محمد أحمد صلاح
استئناف ٢٨/١٧

SHEIKH MOHD. SALAH v. KASSEM & OTHERS.

22.XI.38: Application for leave to appeal heard.
Conditional leave granted. Guarantee of Rs. 300 to be produced within 2 months.
Record to be completed within 6 months.
Stay of execution as regards registration.

Guarantee filed on 7.1.39 Receipt No 54 7068

Legal 166.

GVI R
PALESTINE

№ 547068

RECEIPT קבלה وصل

In the Supreme Court at Jerusalem
בבית משפט ה
لدى محكمة

Civil—Criminal Case / Civil—Criminal Appeal No. 12/38
משפט אזרחי־פלילי / ערעור אזרחי־פלילי מס׳ רקע
القضية الحقوقية/الجزائية / استئناف القضية الحقوقية/الجزائية

V.
נגד
ضد

Received from Mr. H. Jerusmus
the sum of L.P. 0.760
(amount in words) five hundred sixty
in respect of fees

לקבל מאת
הסכום של מ״ם (איר)
(בדרج المبلغ كتابة) הסכום (במלים)
לסלוק
وفاء لـ

Date 7.1.38 التاريخ תאריך

Court Clerk/Cashier
Signature חתימה

كاتب المحكمة/امين الصندوق
סופר בית המשפט/קופאי

*Strike out words inapplicable.

*امحو الكلمات الغير مطابقة

*מחק את המלים שאין צורך בהן

المادة ٨٩ . فإن الفعل الى الفاعل لا الآمر ما لم يكن مجبراً — وعلى اذا امر اجير.
برسم الماء في فناء دكانه فرسب فما تولد منه فضمانه على الآمر .

ملاحظة : فهو يضمن الآمر في هذه الحالة ولا يضمن الفاعل لأن القانون يعتبر الأجير
في حالة كهذه مجبراً على القيام بما يأمره به سيده لأجل اكتساب قوته اليومي واذا لم
يقم بما يأمره به سيده يفقد عمله وبالتالي قوته — وفي هذا من الأجبار ما فيه .

م ٩٠٠ : لو اتلف واحد مال آخر او نقص قيمته تسبباً يضمن لو فعل ما كان سبباً
مفضياً الى تلف مال او نقصان قيمته كان ضامناً .

ملاحظة : اعتقد ان الآمر في حالة كهذه يكون هو المتسبب في الحفر بدفعه
اجر الفاعل وامره اياه بالعمل فعليه يكون هو المتسبب بكل ما ينشأ
من الأضرار من الحفر . .

مجلة ٥٢٦ : ولو استأجر رب الدار عملة لأخراج الجاج الى الطريق فتلف بشيء
فالضمان على العملة ان كان الضمان قبل فراغ عملهم لأن التلف بفعلهم وما
لم يفرغوا لم يكن العمل مسلماً الى رب الدار وان كان التلف بعد فراغ العمل
فالضمان على المستأجر استحساناً لأن بعد فراغ العمل انتقل فعلهم اليه فصار
كأنه فعله بنفسه .

المادة ٩٠٨ : لو سقط حائط واحد واودى غيره ضرراً لا ضمان ما لم يكن قد بناه مائلاً
منذ الابتداء فانه حينئذ يضمن ولو لم يتقدم اليه احد في نقض المقدي .

Negligence

وكان لو مال الحائط للانهدام فتقدم رجل ونبه صاحبه بقوله له
اهدم حائطك ومضى وقت يمكنه فيه هدم الحائط فلم يفعل فعند ذلك يضمن

H. W. CLARKSON, WRIGHT & Co

SOLICITORS.

P. A. WRIGHT, M.A. (CANTAB)
COMMISSIONER FOR OATHS.
Privy Council Agents
TELEGRAPHIC ADDRESS:
GRESHAMITE, HOLB, LONDON.

TELEPHONES:
CHANCERY 5181 (2 lines)
ORPINGTON 1133.

A/MS

3 New Square,
Lincolns Inn,
London W.C.2.
AND AT HOLLAND-ON-SEA, ESSEX
AND PETTS WOOD, Nr ORPINGTON, KENT.

29th Augt 19 40

Dear Sir,

Salah v Kassem & ors

We have your letters of the 20th June and 18th July last the latter letter enclosing an opinion on the appeal with special reference to the Law of Palestine. We do not understand what is happening in this case. We were previously instructed by Mr Georges Elias, to whom we wrote asking for the balance of our fees, Counsels fees and out of pockets, and in respect of which we received £30 on account thereof in April last. Mr Elias stated that his clients thought our fees were high and they were not prepared to accept the same, and we pointed out to him that our fees were the proper fees, and we were not prepared to carry on this case for anything less than the proper fee, and if his clients were not agreeable to accept the same, perhaps Mr Elias would take their instructions as to instructing somebody else in our stead.

The balance of fees required by us is £133. 15. 0. which, of course, includes Counsels fees and other out of pocket payments.

We do not understand whether you are now acting in addition to Mr G.Elias or instead of Mr Elias. Perhaps you will kindly let us know. In any event, if we are to carry on with this case we shall require the balance of fees mentioned above. May we hear from you please.

Yours faithfully,

H.W.CLARKSON WRIGHT & CO

Henry Cattan Esq
Barrister-at-law
199 Jaffa Road
JERUSALEM.

20th June,40.

Messrs. H.W.Clarkson Wright and Co.,
3 New Square,
Lincoln's Inn,
W.C.2.

Dear Sirs,

I am instructed by Sheikh Mohamad Salah of Nablus, who has entrusted you with his Appeal to the Privy Council No.66/1939 against Hussein Abdul Ruhman Kassem and Others to inform you that I am prepared to assist you by any suggestions or opinions on the law of Palestine which you may requir in connexion with this Appeal.

I am therefore at your disposal for any enquiry on the Law of Palestine which you or Counsel may thik fit to make on this matter.

Yours faithfully,

Civil Appeal No: 224/38

In the Supreme Court sitting as a Court of Appeal.

Before:- Mr. Justice Copland, Mr. Justice Khayat and Mr. Justice Abdul Hadi.

In the appeal of:-

1. Sh.
2.
3.
4.

Appellants (Respondents)

v.

Sheikh Mohammed Salah.

Respondent (Appellant)

Appeal and cross-appeal from the judgment of the District Court of Nablus (Appellate Capacity) dated the 30th of June, 1938.

For Appellants: No. 1 - } In person
" 2 -
" 3 -
" 4 -

For Respondent: Wahid eff. Salah

Judgment.

This appeal depends on the value, if any, to be given to an alleged Mugharasah agreement entered into between the parties. We are agreed that there was evidence to support the findings of fact made by the Settlement Officer that there was a mugharasah agreement which was in force for a period of about fifteen years. It is true that a Mugharasah agreement is a disposition within the meaning of the Land Transfer Ordinance, but that does not altogether dispose of the question because by section 10 of the Land (Settlement of Title) Ordinance

a Land Settlement Officer is to apply the Land Law in force at the date of the hearing of the action and, at the same time, he is directed to have regard to equitable as well as to legal right.

Now it is true, as I have said, that a mugharasah agreement is void in law, but in our opinion, it will none the less support an equitable title to the land as between the present parties and we therefore think that the Land Court went wrong in their appeal judgment. As the Settlement Officer remarked, this land was cultivated by the Plaintiffs (Appellants here) under conditions that would prima facie support a claim for a possessory title to the whole land in their favour, had they so claimed.

That being so, the appeal must be allowed, the judgment of the Land Court is set aside, and the judgment of the Settlement Officer restored. The Appellants will have their costs together with £4. — travelling expenses.

It follows, of course, that the cross-appeal is dismissed with costs.

Delivered this 10th day of October, 1938.

British Puisne Judge
Gyland

Puisne Judge
Khayat

I agree with the result of this judgment by virtue of the provisions of Section 54(6) of the Land (Settlement of Title) Ordinance, Drayton Vol. II, Cap. 80.

Puisne Judge
Abdul Hadi

~~Civil Appeal~~

In the ~~honou~~ Honorable Land Court
of Nablus. sitting as a Court of Appeal.

Subject: Appeal from the judgment of the Land Settlement Officer. Tulkarem, given in cases No 173, 316, 317 and 319, Tireh village, dated 15/11/37

Appellant: ... السيد ...

Respondents: 1 2 3 4. ...

The ~~S/O~~ Settlement Officer of Tulkarem issued the above dated judgment in the above mentioned cases against me, ordering that half of the land owned by me be registered in the name of each of the respondents. I applied to His Honour the President of the Land Court of Nablus to grant me leave to appeal, and he granted the same to me in dossier No 17/38. Therefore I hereby lodge this appeal within the legal period, and I submit to your honorable Court the following reasons:-

The question is that I own plots of land situated within the boundaries of the lands of Tireh village, in the Tulkarem Sub-District. and I am in possession of them as owner. The Respondents were working on the lands as cultivators for a part of the produce in consideration of their work and ploughing, with my permission and at my disposal. And I paid the expenses of amelioration of the land and of planting the same with ~~fruit~~ fruitful trees such as figtrees, vines

and the like as I mentioned in the course of the hearing before the Settlement Officer.

1. The Respondents claimed that I handed over to them the plots of land by way of Mughaisa (tricing system) on terms that thereafter they will acquire half the land and half the trees. They have not proved this by lawful or legal evidence, and I denied their claim and I stated that their occupation is to work on the lands and to watch and safeguard them in return for a certain part of the produce. But the Settlement Officer ordered that half the parcels of land and half the trees, the subject matter of this dispute, be registered in the name of the Respondents, in accordance with their claim. This is contrary to law as is set out hereunder.

2. Possession by the Respondents, of the lands and the trees has not been a full possession at all, and they themselves admitted that their possession has been by way of Mughaisa. In these circumstances therefore they have been in possession with my permission and consent, and it depended on my approval of their doings.

If I want I can let them remain on the land, and if I want I can eject them from it. A planter of trees is not entitled to dispose of or mortgage or let out, or cultivate, the land, nor is he entitled to erect buildings thereon. A planter cannot be more than a hireling in return for his benefit from a share in the fruits.

3. Possession is defined by jurists as enjoyment of full and absolute benefit from the land. A tenant who is in possession of the land cannot be regarded as being in possession as an owner. This view is supported by the fact that the law does not regard cultivators who have been in possession of the land for hundreds of years as possessors and owners of that land.

4. A planter of trees can leave his work and the owner of the land can eject him from his land, and this has actually taken place in some of these cases, the fact which was proved before the Land Settlement Officer.

5. The Land Transfer Ordinance 1920 and 1921 provides that whoever wishes to carry out a transaction of transfer of land should first obtain the consent of the government in writing. Under Section 11(1) therefore every transaction of transfer made without obtaining the required consent in writing shall be regarded as null and voide, provided that whoever had paid money in connection with a transfer transaction which has been declared ~~nullo~~ null and void may obtain back (recover) what he had paid by bringing a case for the same in the appropriate Court.

6. The Supreme Court, ~~of~~ sitting as a Court of Appeal, held in Land Appeal No 22/33 (Jorf vs ~~A~~ Shihab ed Din) the following:-

1. Possession of a planter in possession is a trustee
2. Possession in such a case is tantamount to licensed

possession derived from a contract such as a lessee or a mortgage.

~~B~~ 3. In such a case prescription cannot run against the other party. Also the Supreme Court, sitting as a Court of Appeal, held in Land Appeal No 9/32, published on page 846 of the Palestine Law Reports by the Chief Justice, ruled that a Mughaara for half the land and of the trees is a forbidden transaction of transfer by virtue of section 11(1) of the Law of Disposition of Immovable property (sic). All what a planter can do is to claim the return, to him, of what he had expended on the land. Thus the said judgment of the Settlement Officer is absolutely repugnant to the judgment of the Supreme Court of Appeal. It should be borne in mind that by virtue of section 27(2) and section 1 of the Land Settlement Ordinance, the Settlement Officer is bound by legal principle which has been ruled by the Supreme Court of Appeal in its above mentioned judgments, a copy of which was produced with the application for leave to appeal.

Therefore by virtue of section 57(2) of the Land Settlement Ordinance, I request that this appeal be ~~allowed~~ heard in open Court, that I be summoned to attend it, that the judgment of the Land Settlement Officer be set aside,

and that I be declared to be the sole owner. And by virtue of sub-section (3) of the above mentioned section, I request that an order be given to the effect that the lands in dispute be registered in my name, that a certified copy ~~thereof~~ thereof be served on the Registrar of Lands. Jalkarem, and that the Respondents be ordered to pay all the costs here and in the Court below, and the advocate's fees.

Accept my respect.

(Sgd) Mohammad Salah of Nablus
Appellant.

Proceedings of Settlement Officer
in case No. 173,316,317,319/ Tira.

At Tira, 2.11.37. Present: Plaintiff. Defendant in person.
Plaintiff states, on oath:- Parcel was given to me by defendant on mugharasa agreement 18 years ago. I have three witnesses but no paper. Witnesses are Sai'd as Sai'd, Mohammad Bishara and Ahmad al 'Iraqi, all of Tira. They were present at the agreement- verbal. Made in Tira in home of 3rd witness. I started ploughing there and then and planted trees - 'Anab and tuffah and tin. I planted the whole parcel. The trees are there now and bearing fruit. I am still getting ½ produce and I pay the tithes. Defendant is stronger than I, so he gave me half produce of trees and not half land. I produce 3 revenue receipts (Exhbs. A), for years' 35, '36, and '37. Previous ones were lost. I have other lands in Tira - 5 or 6 dunums. Exhibits A are LP 1.345. I looked after the trees and spe spent money on them. Defendant never touched the trees - he is from Nablus and he only comes here at time of produce distribution. Settlement Office calls defendant. His son, 'Umar, speaks for him. (General Power of Attorney examined). Sworn. States: → Claim of Plaintiff imaginary. The person who spent on trees was defendant at time of preparing land for cultivation. Man through whom labourers get their money was plaintiff. The agreement between plaintiff and defendant was that plainitff should act as wakil to look after the property. No written agreement. Verbal - 8 Or 9 years ago. I remember. It was then the trees were planted - not all in same year, but first were planted 8 or 9 years ago. In consideration of work of plaintiff he was to get ½ produce only. From then to now I, as wakil for defendant, came and looked after trees and land to give ½ to plaintiff provided he looked after trees and land. Defendant paid for the trees and for their upkeep until they bore. Most of the trees came from our grove in Qalqilia. The vines costx nothing. After the trees came into bearing, costs were paid by plaintiff but there really were none. It is wellknown in the village that the fact are as I stated . Exhibit A concern the land in question. The man on the land paid, I suggest that Exhibits A - money involved- was paid

by my father. This is mey lad and I did pay tithes. I have not got receipts. I had many receipts. In 1936 our house was demolished and everything was destroyed. That isthe house near the railway that you (Settlement Officer) blew up in 1936.

Settlement Officer calls mukhtar, Muhammad Jundiya. Sworn. States: I know this parcel. Exhibits A are the receipts concerning this land. Receipts do not show that man is necessarily the owner. All the tax on the parcel is paid by plaintiff. Exhibits A represent all the tax. Plaintiff has been paying the tax regularly since the takhmis. Before that, I don't know anything about it. As mukhtar, apart from tax receipts, I don't know the exact points of the affair. The traditional agreement in the village is the mugharasa, but there may have been an exception in this case.

Settlement Officer calls Muhammad Suleiman, member Village Settlement Committee. Sworn. States:- I signed the claim of plaintiff. I signed it because I believed it to be a proper claim. At a certain time, Ahmad al 'Iraqi and Sa'id as Sa'id 'Iraqi and Sheikh Mahmud al 'Iraqi and I were together in the house. Plaintiff was then ploughing a certain plot with melons. Then defendant said to plaintiff " I want to plant this plot with trees and if you are unable to do it I will find somebody else who will". Then they agreed and plaintiff took it to plant it. The agreement was that plaintiff should plant trees and get 1/2 land and trees. This is the habit in the village. That was after the Occupation - not long after. Defendant was just visiting the place. Plaintiff planted the trees - I don't know when he got the trees - he had other karum, and tīn and tuffah also. I also know that plaintiff spent money and cared for trees until they borex fruit. They bore fruit about 10 years ago. At survey for settlement defendant said when plaintiff claimed 1/2, "Only 1/2 trees and fruit are yours and not land".

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(Settlement Officer. In practice, ownership of 1/2 land would not matter so long as it was all planted.)
There was no crop except the trees, except when trees were young. Plaintiff did that.
Defendant's Wakil asks:- At the time of agreement, had any other agreement already taken place ? No- at that time it was begun, as I said. The agreement was a mugharasa - the ordinary one - habitual. No written agreement, as each side should have a copy if one was made. I don't know whether any other person asked to have the trees. Agreement was in house of 'Iraqi.
Settlement Officer calls 'Abd ar Rahim al Kaskiya, member Village Settlement Committee. Sworn. States:- I ~~singe~~ signed claim of plaintiff because I beleive it to be correct. I have cows and I take them there. Once I met plantiff~~s~~ working there. He said he had made an agreement with defendant to plant the land on mugharasa agreement. That was after Occupation - may be 25 years ago. The age of the Tin and Tuffah trees is about 15 years and they are all in full bearing. I was not present at time of agreement. I had the knowledge that I had had a previous experience of mugharasa with the mayor of Tulkarem and I took this to be on the same lines. Plaintiff actually planted the trees and he got the plants from his own Karm or neighbours. The price is nothing for small plants. Up to time of bearing plaintiff paid all expenses and he used to buy a cow for LP. 10.- to work it. I never heard that defendant reimbursed him. It was the ordinary agreement. Plaintiff says - mazbut.
Questioned by defendant's Wakil:- The plants were brought from the Kurum. The vines cost nothing. He got the apples from his own land or his relatives. We live in the same part of the village and take an interest in each other's work. I don't

know that he brought any trees from Qalqilia.

Settlement Officer calls Sa'id as Sa'id al 'Iraqi. Sworn. States:- I know land and parties. Once, defendant was a wasi' to one of my relatives, Mahmud al 'Iraqi. Defendant started giving away his land to people . My relative, Mahmud, asked me to take a parcel from him. I refused. After that, parcels were in possession of cultivators. As far as I know, this parcel was given by defendant to plaintiff on usual ground, which is cultivating trees for 1/2 land and 1/2 trees. I do not remember being present at this agreement, exactly,- but I remember being present when one or other was made. They were all mugharasa- 1/2 trees and 1/2 land. This was about 10 - 15 years ago or more. Plaintiff worked on the land - I used to see him.

Settlement Officer: I must now adjourn to tomorrow, 3rd November.

SETTLEMENT OFFICER
TULKARM STTLEMENT AREAA.

3rd November 1937.

At Tulkarm, 3.11.37. Settlement Officer recalls Sa'id as Sa'id al 'Iraqi. Sworn. Examined by defendant's wakil: I received no money from plaintiff for my evidence.

Defendant's Wakil wants to call plaintiff as witness.

Settlement Officer calls plaintiff. Sworn States:- Agreement was mugharasa. I and my family are still working the whole parcel. You did not agree to partition the shares. I only work on this land of yours. When I made the agreement, there were other people who had done agreements 2 years before, - like mine. One is Hassan Kharawi.

Settlement Officer calls Muslih Salah Mansur, member Village Settlement Committee. Sworn. States:- I know this parcel. The land is owned by defendant. Plaintiff planted the trees. Some say it was mugharasa and some say it was not.

(Settlement Officer. Have you any personal knowledge of it?

Answer. Yes. In 1931 there came a man and bought produce of trees of this land . The buyer sent son of his brother to take and look after the crop before ripening. While we were sitting in Café in Qalqilia plaintiff came and said to defendant "I have more right to buy the fruit than any foreigner". Defendant said "I have already agreed to sell the fruit and "khalass" - and you have ½ the trees and I can't change my word". At that time man whom bought took over the season).

To defendant: After trees were planted, generally the man who cultivates pays or makes the account with his lessor. At time of takhmis, this land was shown in both plaintiff's and defendant's names. Usually the possessor has his name shown in the tithes. After takhmis, the owner's name is shown as paying tax. There are different arrangements about mugharassa. Sometimes, 1/3, 1/4 and so on. I was not present but it is said that it was ½ the produce, - no, half of the trees. I was not a mukhtar. There are generally documents in case like this.

(Settlement Officer asks question. Don't you think it right that you should have a written agreement yourself with plaintiff for his connention with the land? - There would be no necessity for it.

There is no relation between Muhammad Bishara who signed plaintiff's claim and plaintiff. Hasan Kharawi was cultivating lands on an agreement with you, same as other people. He worked some time until he got old and then left and you took the land from him. He planted the trees and I don't know what he took. I don't know if it is the same agreement as this. Today Kharawi told me he used to get ½ the produce and that he left when he could not work any longer.

Sttlement Officer . Why don't you call Kharawi as a witness? I heard he was given LP 5 to go away.

(Questioner wants to ask witness about his evidence in a court case : Settlement Officer : Where is the judgment? I havent got it. case. S

Settlemtnt Officer : Then I cannot have evidence connected with it.

Settlement Officer: Case is now adjourned to Saturday, 6th

Proceedings of Settlement Officer
in case No. 173,316,317,319/ Tira.

At Tira, 2.11.37. Present: Plaintiff. Defendant in person.

Plaintiff states, on oath:- Parcel was given to me by defendant on mugharasa agreement 18 years ago. I have three witnesses but no paper. Witnesses are Sai'd as Sai'd, Mohammad Bishara and Ahmad al 'Iraqi, all of Tira. They were present at the agreement- verbal: Made in Tira in home of 3rd witness. I started ploughing there and then and planted trees - 'Anab and tuffah and tin. I planted the whole parcel. The trees are there now and bearing fruit. I am still getting ½ produce and I pay the tithes. Defendant is stronger than I, so he gave me half produce of trees and not half land. I produce 3 revenue receipts (Exhbs. A), for years' 35, '36, and '37. Previous ones were lost. I have other lands in Tira - 5 or 6 dunums. Exhibits A are LP 1.345. I looked after the trees and spent money on them. Defendant never touched the trees - he is from Nablus and he only comes here at time of produce distribution. Settlement Office calls defendant. His son, 'Umar, speaks for him. (General Power of Attorney examined). Sworn. States: Claim of Plaintiff imaginary. The person who spent on trees was defendant at time of preparing land for cultivation. Man through whom labourers get their money was plaintiff. The agreement between plaintiff and defendant was that plainitff should act as wakil to look after the property. No written agreement. Verbal - 8 Or 9 years ago. I remember. It was then the trees were planted - not all in same year, but first were planted 8 or 9 years ago. In consideration of work of plaintiff he was to get ½ produce only. From then to now I, as wakil for defendant, came and looked after trees and land to give ½ to plaintiff provided he looked after trees and land. Defendant paid for the trees and for their upkeep until they bore. Most of the trees came from our grove in Qalqilia. The vines cost nothing. After the trees came into bearing, costs were paid by plaintiff but there really were none. It is wellknown in the village that the fact are as stated . Exhibit A concern the land in question. The man on the land paid, I suggest that Exhibits A - money involved- was paid

by my father. This is my land and I did pay tithes. I have not got receipts. I had many receipts. In 1936 our house was demolished and everything was destroyed. That is the house near the railway that you (Settlement Officer) blew up in 1936.

Settlement Officer calls mukhtar, Muhammad Jundiya. Sworn. States: I know this parcel. Exhibits A are the receipts concerning this land. Receipts do not show that man is necessarily the owner. All the tax on the parcel is paid by plaintiff. Exhibits A represent all the tax. Plaintiff has been paying the tax regularly since the takhmis. Before that, I don't know anything about it. As mukhtar, apart from tax receipts, I don't know the exact points of the affair. The traditional agreement in the village is the mugharasa, but there may have been an exception in this case.

Settlement Officer calls Muhammad Suleiman, member Village Settlement Committee. Sworn. States:- I signed the claim of plaintiff. I signed it because I believed it to be a proper claim. At a certain time, Ahmad al 'Iraqi and Sa'id as Sa'id 'Iraqi and Sheikh Mahmud al 'Iraqi and I were together in the house. Plaintiff was then ploughing a certain plot with melons. Then defendant said to plaintiff " I want to plant this plot with trees and if you are unable to do it I will find somebody else who will". Then they agreed and plaintiff took it to plant it. The agreement was that plaintiff should plant trees and get 1/2 land and trees. This is the habit in the village. That was after the Occupation - not long after. Defendant was just visiting the place. Plaintiff planted the trees - I don't know when he got the trees - he had other karum, and tīn and tuffah also. I also know that plaintiff spent money and cared for trees until they bore fruit. They bore fruit about 10 years ago. At survey for settlement defendant said when plaintiff claimed 1/2, "Only 1/2 trees and fruit are yours and not land".

(Settlement Officer. In practice, ownership of 1/2 land would not matter so long as it was all planted.)
There was no crop except the trees, except when trees were young. Plaintiff did that.
Defendant's Wakil asks:- At the time of agreement, had any other agreement already taken place ? No- at that time it was begun, as I said. The agreement was a mugharasa - the ordinary one - habitual. No written agreement, as each side should have a copy if one was made. I don't know whether any other person asked to have the trees. Agreement was in house of 'Iraqi.
Settlement Officer calls 'Abd ar Rahim al Kaskiya, member Village Settlement Committee. Sworn. States:- I ~~singe~~ signed claim of plaintiff because I beleive it to be correct. I have cows and I take them there. Once I met plantiff~~f~~ working there. He said he had made an agreement with defendant to plant the land on mugharasa agreement. That was after Occupation - may be 25 years ago. The age of the Tīn and Tuffah trees is about 15 years and they are all in full bearing. I was not present at time of agreement. I had the knowledge that I had had a previous experience of mugharasa with the mayor of Tulkarem and I took this to be on the same lines. Plaintiff actually planted the trees and he got the plants from his own Karm or neighbours. The price is nothing for small plants. Up to time of bearing plaintiff paid all expenses and he used to buy a cow for LP. 10.- to work it. I never heard that defendant reimbursed him. It was the ordinary agreement.
Plaintiff says - masbūt.
<u>Questioned by defendant's Wakil</u>:- The plants were brought from the Kurūm. The vines cost nothing. He got the apples from his own land or his relatives. We live in the same part of the village and take an interest in each other's work. I don't

know that he brought any trees from Qalqilia.
Settlement Officer calls Sa'id as Sa'id al 'Iraqi. Sworn.
States:- I know land and parties. Once, defendant was a wasi' to one of my relatives, Mahmud al 'Iraqi. Defendant started giving away his land to people . My relative, Mahmud, asked me to take a parcel from him. I refused. After that, parcels were in possession of cultivators. As far as I know, this parcel was given by defendant to plaintiff on usual ground, which is cultivating trees for 1/2 land and 1/2 trees. I do not remember being present at this agreement, exactly,- but I remember being present when one or other was made. They were all mugharasa- 1/2 trees and 1/2 land. This was about 10 - 15 years ago or more. Plaintiff worked on the land - I used to see him.
Settlement Officer: I must now adjourn to tomorrow, 3rd November.

SETTLEMENT OFFICER
TULKARM STTLEMENT AREAA.

3rd November 1937.
At Tulkarm, 3.11.37. Settlement Officer recalls Sa'id as Sa'id al 'Iraqi. Sworn. Examined by defendant's wakil: I received no money from plaintiff for my evidence.
Defendant's Wakil wants to call plaintiff as witness.
Settlement Officer calls plaintiff. Sworn States:- Agreement was mugharasa. I and my family are still working the whole parcel. You did not agree to partition the shares. I only work on this land of yours. When I made the agreement, there were other people who had done agreements 2 years before, - like mine. One is Hassan Kharawi.
Settlement Officer calls Muslih Salah Mansur, member Village Settlement Committee. Sworn. States:- I know this parcel. The land is owned by defendant. Plaintiff planted the trees. Some say it was mugharasa and some say it was not.

(Settlement Officer. Have you any personal knowledge of it?

Answer. Yes. In 1931 there came a man and bought produce of trees of this land . The buyer sent son of his brother to take and look after the crop before ripening. While we were sitting in Café in Qalqilia plaintiff came and said to defendant "I have more right to buy the fruit than any foreigner". Defendant said "I have already agreed to sell the fruit and "khalass" - and you have ½ the trees and I can't change my word". At that time man whom bought took over the season).

To defendant: After trees were planted, generally the man who cultivates pays or makes the account with his lessor. At time of takhmis, this land was shown in both plaintiff's and defendant's names. Usually the possessor has his name shown in the tithes. After takhmis, the owner's name is shown as paying tax. There are different arrangements about mugharassa. Sometimes, 1/3, 1/4 and so on. I was not present but it is said that it was ½ the produce, - no, half of the trees. I was not a mukhtar. There are generally documents in case like this.

(Settlement Officer asks question. Don't you think it right that you should have a written agreement yourself with plaintiff for his connection with the land? - There would be no necessity for it.

There is no relation between Muhammad Bishara who signed plaintiff's claim and plaintiff. Hasan Kharawi was cultivating lands on an agreement with you, same as other people. He worked some time until he got old and then left and you took the land from him. He planted the trees and I don't know what he took. I don't know if it is the same agreement as this. Today Kharawi told me he used to get ½ the produce and that he left when he could not work any longer.

Sttlement Officer . Why don't you call Kharawi as a witness? I heard he was given LP 5 to go away.

(Questioner wants to ask witness about his evidence in a court case : Settlement Officer : Where is the judgment? I havent got it.

Settlemtnt Officer : Then I cannot have evidence connected with it.

Settlement Officer: Case is now adjourned to Saturday, 6th

November to be heard with 318 and 316.

SETTLEMENT OFFICER
TULKARM SETTLEMENT AREA.

3rd November 1937.

Hearing resumed at Tira, 6.11.37. Present Plaintiff. Wakil of defendant.

Settlement Officer calls Ibrahim Nasrallah (3rd witness of defendant) Sworn. States: I know this prcel. Your father came to the place of Mahmud 'Iraqi, about 10 years or 11 years ago. I don't remember whether it was winter or summer. Defendant was asked by plaintiff to give him the land to plant, for 1/2 land and 1/2 trees and defendant refused. Mahmud Ibrahim el 'Iraqi, 'Abd ar Rahim as Sa'id were there. I don't know whether Muhammad Bishara was there. I know all these people well.

Examined by Settlement Officer. Plaintiff planted the trees in the same year, part, and part after. Defendant agreed to give plaintiff on 1/2 the produce and then plaintiff planted.

(Settlement Officer. You said above you know nothing more than you stated). I was not present when they did come to an agreement.

Next witness not present.

Yusuf Mahmud Mansur called. Sworn. States:- I know this parcel. In 1931 we were at the Railway Station at Qalqiliya. Defendant came and leased his share in this land to Muhammad Abu Radi - his share was one half, half the trees, I mean. Then Abu Radi sent son of his brother to the land and after 2 hours Abu Radi and plaintiff came back to the Station. Plaintiff said to defendant: I have priority right to have this rented me, - meaning 1/2. Defendant said: I have already decided to let Abu Radi have 1/2 and I can't go back on my word. You have only half the fruit. That is all.

Settlement Officer: Hasan Kharawi has not come. Defendant suggests he was given some money to stay away and says he wants him summoned to give evidence about a parcel which he says is exactly like this.

Settlement Officer decides to take now cases 316, 317, 319,- same thing.

Present: Plaintiffs in all 3 cases, personally. Wakil of defendant (same in all cases.)

Plaintiffs state: Plaintiff in case 319 has exactly the same story as plaintiff in these proceedings.

Plaintiff in case 319 states:- (On oath). 15 years ago, after plaintiff in case 173 made his agreement, (same year) I made my agreement on the same basis. I asked Husein about his agreement and I decided to have the same kind of one.. It was at the station of Qalailiya, 15 years ago about. I don't remember that there was anybody else there. I made it with defendant in person and I planted the trees - apples, figs and grapes. 2 or 3 years it took to plant the whole parcel. I got the trees from my father's property. Since then I have looked after the whole land and have taken 1/2 produce.

Settlement Officer calls plaintiff in case 316. Sworn. States:- Defendant used to come to Tira. He gave me the land on mugharasa agreement - 1/2 land and 1/2 trees - according to custom. That was before the agreement in case 173 and 319,- one year after Occupation. At the agreement, were present Ahmad al 'Iraqi, 'Abd ar Rahim as Sa'id (dead) Sa'id as Sa'id, in house of Ahmad al 'Iraqi. I planted trees there and then - apples, mish-mish, pomegranates, figs - I got them from the people of the village - we all give on another these things. Ever since then I have cultivated it and taken 1/2 the produce and 1/2 this land. Besides this, I have no land in the village, (Verified - some land he had was sold 7 and 4 years ago). I produce tithe receipts dated 1937, 35, 31, 32, 30 - Exhibits A in case 316.

(Settlement Officer calls tithe committee members and verifies that these receipts are for this land.)

Plaintiff continues: I first knew defendant didn't want to give me my proper 1/2 at Settlement. Before that, the agreement I stated was understood.

Settlement Officer calls plaintiff in case 317. Sworn. States:- Only 10 or 11 years ago I took this parcel. I took it just the same as the others did and according to custom. I was with Mahmud al 'Iraqi - he is supposed to be defendant's agent. His brother, Ahmad, was there also - and Sa'id as Sa'id. (They are all relatives.) Same year I planted apples, figs and vines. Many lands in the village have apples - they are good. I go t the trees from 'kurum an Nas' I first found out defendant didn't want to stick to his agreement, at Settlement.

Defendant's wakil states, on oath:- Case 319. In first case as mentioned, claim is imaginary. Trees are as proved to the Court. Most were taken from our orange grove and also he supplies expenses of working the ground. Figs and grapes cost nothing. Apples were from defendant's orange grove. Expenses of cultivation are practically worthless. There was an agreement - one agreement not for all, but similar. Each should plough the land and the expenses be paid by my client - plaintiffs were to plant the whole of the land and were to get 1/2 produce when trees came into bearing, so long as they continued to work. In any case there was no written agreement.

The people who agreed with defendant at the same time approximately and on the same basis were: plaintiffs in cases 173, 316, Hasan Abu Kharawi (missing witness) and plaintiff in case 319. Hasan's agreement is the same as the others' and after 6 or 7 years or so defendant came to inspect lands and Hasan was sent out of the land for not fulfilling agreement. He had not ploughed between the trees, but had planted them. That is parcel now claimed by plaintff in case 317 and that is the reason why Khalil's agreement was later.

Settlement Officer calls plaintiff, Case 317. Sworn. States:- There were only some grape-vines on the land when I came to it.

Defendant's wakil continues:- Had Hasan made an agreement as they state, it would not have been possible to send him out, and, therefore, so with the others. (Settlement Officer. Not so.

you have not proved Hasan's Agreement to have been the same as the others') The non-presence of an agreement is one up for me. (Settlement Officer. The non-presence of your agreement is one down for you). Plaintiffs rely on witnesses and on custom. Proof by verbal evidence in such case is ghair qānūni. These parcels are not registered in the Tabu.

My witness in case 173 was only to prove certain acts and the villagers as a whole will not come forward to give evidence for me. My witnesses in these cases are the same as in 173, and I do not wish to call any others except the infamous Hasan.

Settlement Officer. I have given an order for his appearance under pain of arrest.

Settlement Officer calls plaintiff case 319, on oath. Questioned by wakil for defendant: Nobody was present at our agreement.

Wakil for defendant to plantiff in case 316 (sworn): You never gave me a penny for cultivating the land - expenses. Before planting trees, I planted batteikh - 2 or 3 or 4 years until the trees grew up. Before I planted trees, I planted nothing.

To plaintiff in case 317 :(On oath) The parcel was only planted with 'Anab,- perhaps 40 or 50 in the whole parcel. It was all kharab. Defendant and Mahmud 'Iraqi gave me there parcel. Defendant came and asked me why I hadn't planted the parcel with trees - 2 years after I planted it. I said the vinees are still small and he should see after a year or two. There were young apples and figs, etc., as well. He saw the land was not well covered. I was not present at other agreements. Defendant told me the agreement was same as others.

Plaintiff in case 316 says: This parcel originally belonged 1/2 to defendant and 1/2 to Dar Mansour, who gave it to cultivators on same basis as defendant gave to us. I ask that these cultivators be questioned. (Settlement Officer : This is for another parcel and it is not necessary to call witnesses.

Plaintiff in case 319 produces Exhibits A - tax receipts.

Settlement Officer askes if anybody has got anything to day. No.

Settlement Officer calls Muslih Salah Mansour. Sworn. States:-

(At request of defendant's wakil). Only one thing more - Khalil Hamid's parcel was originally with Hassan Kharawi. I do not know the agreement between them. Hasan planted it with figs and vines. When Hasan went out and Khalil came in, there were figs and vines,- poor trees, worth very little,- mostly būr. Khalil planted fresh trees - figs- and he revived the old vines. Hasan left as he became unable to cultivate - he had no more cattle to work it. If a man does not fulfil the conditions of mugharasa, he leaves the land. It is understood that all the agreements were alike, including that of Hasan.

Settlement Officer recalls Ibrahim Nasr-Allah. (ON oath). States:- I only know about case 173 and that Hasan Kharawi had one parcel for a time and left later. He left as he couldn't work it any longer. I have no further knowledge of these parcels. I understood that all agreements were the same, including Hasan's.

Settlement Officer recalls Yusef Mahmoud Mansour. Sworn. States:- I know only about Hasan kharawi - exactly as other witnesses said. All agreements were most probably the same, including Hasan's. If a bloke fails to carry out his agreement, he gets out. It was understood in the village that Hassan got out because he failed to carry out agreement. Hassan told me his agreement was for 1/2 the trees and Hassan said he agreed on same basis with plaintiff in case 173. The trees are more valuable today.

Hasan Kharawi now arrives. Sworn. States:- I once had a parcel for defendant on an agreement, It is the parcel that Khalil now has. I made the agreement about 15 or so years ago. It was that I should cultivate the parcel and I asked him to agree on 1/2 the land and 1/2 the trees and he refused, saying "I have land which I give on 1/2 trees only." So I made the agreement - there was no conclusive agreement with anybody and we didn't quite know whether we had 1/2 land as well as 1/2 trees - only we thought that the custom would be followed here. So I planted the land - tīn and 'anab. Then I could not continue,

as I had no cattle. I didn't ask defendant for cattle as the agreement was I should provide them. So I left the land according to our agreement. I heard that Khalil afterwards came there. Questioned by wakil for defendants: I don't remember the place of the agreement. I kept land for 4 or 5 years. Nothing was bearing when I left. Defendant told me to leave and he gave me my expenses for fencing the land. I should not have been able to continue had you given me the whole land. I told Yusef Mahmud and Muslih Salah exactly what I said now. The agreement was as I have said. Plaintiff in case 316 asks witness: When I became unable to cultivate, I got LP. 12 from defendant, I beleive.
Defendant's wakil states: Questions centre round (1) Custom, which only concerns citrus, because of expenses; my client used to pay tithes. Custom cannot be taken as a law - even the agreement was not on basis of custom. Perpetual partnership cannot be except in marriage. (Settlement Officer: Not even then.) There was a similar case in Qalqilia. (2) Law of proprietorship. Settlement Officer adjourns case for decision, for reading in village on 8.11.37.

6th November,1937.

SETTLEMENT OFFICER
TULKARM SETTLEMENT AREA.

نابلس ٢٩/٧/٢٤

حضرة الفاضل الأستاذ حمدي خفش كلية المحترم

سلماً واحتراماً اما بعد بالأمس تشرفت بخبر كم المرسل الى والدي الشيخ محمد خفش صباحاً
وبالنظر لتغيب والدي عن نابلس من جهة ومن جهة أخرى فاني طبعي الفراسة.
لذلك ارجو غضه النظر بضعة أيام لدينا منع من الوقت نظراً لطول المدة التي
ستبقى المحكمة بالأزمة الراهنة وهي ستة أشهر لذلك فسأتصل بالوالد حالاً
وفي أقرب وقت ممكن بحضرتكم. مع تقديم شكري واحترامي لفضلكم

المخلص

نابلس

Settlement Appeal No. 17/38

رسم الصوغ ٢٥٠

REGISTRAR NABLUS
FEES RECEIVED
25 JUL 1928
محمد واصف ٢٨٨٩٧٨

In the Land Court of Nablus.

I hereby certify that this is a true copy of the original.

S. Dulteck
Registrar.

Settlement Appeal No. 17/38.

IN THE LAND COURT OF NABLUS(APPELLATE CAPACITY).

BEFORE: His Honour Judge W. Clive Curry, A/President.
His Honour Judge Muhammad Bey Baradey.

In the appeal of:

Shiekh Muhammad Salah,
of Nablus. APPELLANT.

v.

1. Shiekh Abdul Rahman Yacoub Kassem.
2. Abdul Kader Ez-Zein Ahmad.
3. Khalil Hamad Muhammad Kassem.
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

Appeal from the decision of the Land Settlement Officer, Tulkarm Settlement Area, dated 15th November, 1937, in cases Nos. 173, 316, 317 & 319/Tira.

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J U D G M E N T .

In this case the La nd Settlement Officer, after hearing the evidence of the parties and their witnesses, found that appellant handed over the land which was not registered, to the respondents in a "Mugharasa" agreement whereby, in return for the respondents' planting and cultivating appellant's land the respondents become owners of one half of the land and trees. The Land Settlement Officer having heard the witnesses we see no reason for disagreeing with his finding of facts. The Land Settlement Officer as a result of these findings, ordered that one half share of the land and trees upon it should be registered in the name of the respondents. The appellant has appealed on the ground that "Mugharasa" was a void disposition as the written consent of the Government had not been obtained in

accordance with section ~~11~~ 4. of the Land (Transfer)Ordinance.

Following the judgments in C.A. 90/32, 20/33 and 90/33 we hold that the agreement between the parties in this case was a disposition under section 11 of the Land (Transfer) Ordinance to which the written consent of the Government was necessary and as that consent was not obtained, the agreement was void but that the respondents are entitled under the aforementioned section to recover the money spent by them in improving the land. Such money should include also remuneration for the respondents' labour as, in our opinion, such money and labour formed the consideration for the void disposition as laid down in Civil Appeal 90/33 (See Goadby on the Land Law of Palestine pp. 141 and 146).

On these grounds and in view of the circumstances of this case we find it would be inequitable and unjust were the respondents to be deprived of the fruits of their exertions and of the money they expended on the land, it being borne in mind that it was solely due to their ceaseless and untiring efforts during a period of nearly fifteen years that the land was converted into a thriving orange grove, while appellant contributed neither money nor labour to the cultivation of this property. We therefore feel that on principles of equity and justice a remedy should be provided for them without their going to the enormous trouble and expence of seeking a remedy by action in the appropriate Court a nd before the land and trees are registered wholly in the name of the appellant, as in the event of the respondents' having to institute a separate action,

espacially after they have vacated possession and after the land and tress have been registered in appellant's name, litigation between the parties is liable to be protracted apart from the expence and trouble that would be caused to them, before they are in a position to recover compensation, should they ever be able to do so .

We therefore think that, on the analogy of section 60(2) and (3) of the Land (Settlement of Title) Ordinance, the Settlement Officer may apply such remedy and may fix the appropriate compensation (including money and compensation for labour) and charge such compensation on the Land, after such land and trees have been registered wholly in appellant's name.

The decision of the Land Settlement Officer is therefore set aside and the case is remitted to him to proceed as directed and give a fresh decision. Costs to follow the event.

Given this 30th day of June, 1938.

Sgd. M. Baroday
JUDGE.

Sgd. W. Clive Curry
A/PRESIDENT.

DISTRICT COURT, NABLUS
DELIVERED on
21 JUL 1938
IN OPEN COURT

In presence of both parties.

(Sgd.) W. CLIVE CURRY.

FAH

سعادة رئيس محكمة اراضي نابلس المحترم

الموضوع : طلب اذن باستئناف قرار مأمور تسوية الاراضي لطولكرم

القضايا رقم ١٧٢ بلوك ٧٧٢٢ قسيمة ١١

" " ٢١٦ " ٧٧٧٦ " ٢٤

" " ٢١٧ " " " ٢٥

" " ٢١٩ " " " ٢٦

طالب الاذن بالاستئناف . - الشيخ محمد بن الشيخ حسن نصر صلاح من نابلس

ضد . - حسن عبد الرحمن يعقوب قاسم
" عبد القادر الزين احمد
" خليل حمد محمد قاسم
" مصلح خليل حمد ابو عفص

جميعهم من هاشم قرية الطيره طولكرم

تاريخ ٢٩/١١/٩٢٧ تبلغت قرار مأمور تسوية الاراضي لطولكرم بتفضيله الحكم لصالح المدعين وتسجيل نصف القسم على اسمائهم في الاراضي التي امتلكوا وتصرفوا بها -

وعلى تاريخ ٢ كانون ٩٢٧ قدمت طلب الاذن بالاستئناف للقرار المنوه عنه لدى مأمور التسوية حسب الاصول

وتاريخ ٢٢ كانون ٩٢٧ تلقت جوابا برفض الاذن المذكور لذلك اتت باستدعاء ضد ترجو منحها الاذن بالاستئناف لدى محكمتكم الموقرة للاسباب القانونية وقرارات محكمة الاستئناف العليا

ادعى المدعون انني سلمتهم قطع الاراضي الطريبة المفاسد على ان يكون لهم نصف الارض والشجر وانكر ضد الادعاء .

تمهيد اصل النزاع الذي يتضمن الادعاء بحصة من الحاصلات يعتبر ملاكا ام لا .

٢ - هل يعتبر مرور الزمان على المزارع .

٣ - هل يجوز الحكم في عدد من القضايا بناء على تحقيقات في قضية واحدة وثبت ان تاريخ زراعة الاراضي المدعى بها وعددها ابقة قطع كل قطعة منها اختلفت في تواريخ زراعتها من طرف المدعين في سنين مختلفة حسب اقرار المدعين .

٤ - هل تقبل البينة الشخصية في دعوى اتفاق على مكاتبة على اساس المزارعة .

٥ — هل أقوال المدعى فقط تكفي كبينة على اتفاق مزعوم.

٦ — هل لمأمور التسوية الحق في عدم سماع بينات المدعى عليه وفقاً للمادة ١٤ من قانون البينات المعدل وذلك بالطلب في أثناء المحاكمة.

(أ) — ان حادثات المسألة هي ان امك قطعة ارض واقعة ضمن اراضي الطرة طويكرم وتصرف بها بصفتي مالك. ان المدعيه يشتغلون في الارض بصفتهم مزارعين على حصة من الحاصلات وذلك بإذني مني وتحت تصرفي وارادتي ومراقبتي وكنت ادفع مصاريف اصلاح الارض وشراء اشجار مثمرة مثل التين والعنب وما اشبه ذلك كما ذكرت في اثناء المحاكمة امام مأمور التسوية وطلبت ان تسمع البينة على ذلك بصفتي انا المتصرف قانوناً الا ان مأمور التسوية اكتفى باعتراف المدعيه بأنهم يشتغلون الارض على اساس المزارعة ورفض الطلب.

(ب) ان المزارع وماله من حقوق مربوط في قانون حماية المزارعين.

(ج) وان التصرف ومرور الزمان لا يمكن تطبيقها مع حقوق المزارع حسب ان التصرف الذي يجري باذنه لا يمكن اعتباره تصرفاً استقلالياً مطلقاً وضده لا يمكن ان يسري عليه مرور الزمان وقد عرف علماء القانون ان التصرف هو انتفاع المالك ولا يعتبر المتصرف بالاذن، ملاكاً اذ لا يجوز ان يدعي هو القرار ومرور الزمان لاستملاك الارض.

تاريخ ١١/٢٧/٩٢٧ نعيد سماع قضية ١٧٢ للحكم وهي من ضمن هذه القضايا. ان المدعي قدم شهود ليثبت انه حصل اتفاق شفاهي على ان يكون له نصف الارض والشجر وملخصها ان الشهود قالوا انهم يتذكرون ان المدعي قال لهم من القديم انه اخذ الارض على نصف الارض والشجر اي على لسان المدعي ذاته واحدهم قال انه يتذكر انه جرى حديث بين المتداعيين وهي حسب العوائد. هذه هي بينة المدعي لا تحتاج الى تعليل اذ بأقرار مأمور التسوية من ضمن قراره ان ليس لها اي قيمة من الوجه القانوني.

ويوم السبت الواقع في ١٢/٢٤/٩٢٧ نعيد سماع باقي القضايا ٢١٦ و٢١٧ و٢١٩ للحكم وملخص ما جرى هو ان مأمور التسوية استنطق كل مدعي بقوله هل هذه القضية هي مثل القضية ١٧٢ وكان الجواب نعم. ولما سئل كل منهم عن البينات التي لديه الجواب انه لا يوجد بينات بخصوص ذلك اذ انه لما جرت الاتفاقية الشفاهية لم يكن احد حاضراً. وعليه اجل النظر بالحكم لوقت آخر.

بأثناء المحاكمة طلبت ان تسمع شهود وان تسمع البينات على حق تصرفي رفضه طلبي ايضاً من هذه الجهة الا ان مأمور التسوية سمع بعض اعضاء لجنة التسوية عن سمو عاتهم ومعلوماتهم الشخصية وملخصها انها على نفس

الشجر حسب ما هو شائع في قريتهم وثبت أيضاً أن كل واحد منهم إذا تصرف في وقت من الأوقات على الغابة والحراسة يكون أسبق لإخراجه من الأرض كما جرى ذلك بالقضية ١١٧ إذ أن القطعة المذكورة نزعت من تحت يدي وضع يدي زراعتها مدة خمسة سنوات ولعدم قيامه بالغابة والحراسة قد طرد من الأرض وسلمت إلى المدعى بهذه القضية وهو خليل حمد محمد القاسم -

قرار مأمور التسوية يتلخص من جهة دعوى المدعي بأن عبد الله واسند لم يتصرف في جميع البيانات التي سمعها مأمور التسوية في قضية ١١٢ لم تؤيد دعوى المدعي ولم تكن مطابقة لدعواه بالرغم من أن البيانات التي تقدمت في القضية المذكورة هي غير قانونية حسب اعتراف المأمور المحاكمة من جهة ومن جهة أخرى أنهم يعترفون أنهم يستغلون الأراضي المتنازع فيها وفي ضوء ذلك لا يمكن اعتبار مرور الزمان في ذلك لذا أطلب الأذن بالاستئناف للأسباب القانونية الآتية :-

١ - قررت محكمة الاستئناف العليا في قضية / جورج / ضد شلبي الدين / أن المتصرف بطريق المقاسمة لا يعتبر متصرفاً تصرفاً مطلقاً ولا يكتسب أي حق في ملكية الأرض وأن كل ما يستطيع أن يعمله المقاسم هو أن يقيم دعوى بما صرف على الأرض . وسأقدم صورة مصدقة من المحكمة المذكورة عن هذا القرار

٢ - وكذلك قررت محكمة الاستئناف العليا بقرارها رقم ٩٢٥/٩٠ صحيفة ٨٤٦ من مجموعة قضاء القضاة أن المقاسم على نصف الأرض معاملة تصرف ممنوعة وأن كل ما للمقاسم أن يعمله هو أن يطالب بما صرف على الأرض بموجب المحكمة من قانون التصرف بالأموال الغير منقولة

لذلك حيث بأستدعائي هذا أطلب الأذن بالاستئناف حفظاً لحقوقه القانونية وسأتقدم بصورة مصدقة عن قرارات محكمة الاستئناف العليا وأدعم بالنقاط القانونية التي تؤيد طلبي لعدم قانونية قرار مأمور التسوية ومخالفته لأحكام المحاكم المذكورة لفلسطين وقرارات محكمة الاستئناف العليا والأغرب أيضاً في قضايا مماثلة لقضايانا هذه .

لذلك استرحم إعطائي الأذن بالاستئناف وأقبلوا احترامي

٢٢/٩٢٧
٢٢

أحكام مأمور التسوية نقض

IN THE LAND COURT OF NABLUS(APPELLATE CAPACITY)

S ettlement Appeal No. 17/38

BETWEEN:

Shiekh Muhammad Salah, of Nablus. APPELLANT.

and

1. Shiekh Abdul Rahman Yacoub Kassem.
2. Abdul Kader Ez-Zein Ahmad.
3. Khalil Hamad Muhammad Kassem.
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

D e c r e e

This cause coming on for hearing this 30th day of June, 1938, before His Honour Judge W. Clive Curry, A/President Land Court Nablus, and His Honour Judge Muhammad Eff. Baradey, Judge Land Court Nablus, and upon reading the notice of appeal filed by Shiekh Muhammad Salah and the reply filed by the respondents;

IT IS THIS DAY ADJUDGED that the decision of the Land Settlement Officer dated 15.11.37 in cases Nos. 173, 316,317, and 319/Tireh be and is hereby set aside and the case remitted to him to determine the compensation (Including money and compensation for labour) payable by the appellant to the respondents in respect of their cultivation of the property in dispute and that such compensation be charged on the land and that the costs of this action do follow the event.

GIVEN under the seal of this Court this 30th day of June, 1938, and delivered in open Court in presence of both parties this 21st day of July, 1938.

By the Court

REGISTRAR NABLUS
FEES RECEIVED
- 2 AUG. 1938
٢٨٩١٩٤

REGISTRAR.

FAH.

IN THE LAND COURT OF NABLUS(APPELLATE CAPACITY)

S ettlement Appeal No. 17/38

for Service Only.

BETWEEN:

Shiekh Muhammad Salah, of Nablus. APPELLANT.

and

1. Shiekh Abdul Rahman Yacoub Kassem.
2. Abdul Kader Ez-Zein Ahmad.
3. Khalil Hamad Muhammad Kassem.
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

D e c r e e

This cause coming on for hearing this 30th day of June, 1938, before His Honour Judge W. Clive Curry, A/President Land Court Nablus, and His Honour Judge Muhammad Eff. Baradey, Judge Land Court Nablus, and upon reading the notice of appeal filed by Shiekh Muhammad Salah and the reply filed by the respondents;

IT IS THIS DAY ADJUDGED that the decision of the Land Settlement Officer dated 15.11.37 in cases Nos. 173, 316,317, and 319/Tireh be and is hereby set aside and the case remitted to him to determine the compensation (Including money and compensation for labour) payable by the appellant to the respondents in respect of their cultivation of the property in dispute and that such compensation be charged on the land and that the costs of this action do follow the event.

GIVEN under the seal of this Court this 30th day of June, 1938, and delivered in open Court in presence of both parties this 21st day of July, 1938.

By the Court

for D.Effendi

REGISTRAR.

FAH.

In the land court of Kenya at Nairobi

Settlement Appeal No. 17/58

For court use only

BETWEEN:

Sheikh Muhammad bin Salim, of Jabiuni. ..... Appellant

and

1. Salim Abdul Rahman Yusuf Alawi.
2. Abdul Kader Yusuf Alawi.
3. Khalil Ahmed Abdulla Hassan.
4. Rudolph Khalil Ahmed Hassan. ..... Respondents

J u d g m e n t

This cause coming on for hearing this 20th day of June, 1958, before the Honour Judge, Olive Cunny, A/President Land Court Kenya, and the Honour Judge Edward Sir, Assessor, Judge Land Court Kenya, and upon reading the notice of appeal filed by Sheikh Muhammad bin Salim and the reply filed by the respondents:

IT IS THIS DAY ORDERED that the decision of the Land Settlement Officer dated 15.11.57 in cases Ios. 170, 216, 217, and 218/Tiwi be and hereby set aside and the case remitted to him to determine the compensation (including money and compensation for labour) payable by the appellant to the respondents in respect of their cultivation of the property in dispute and that such compensation be charged on the land and that the costs of this action do follow the event.

GIVEN UNDER the seal of this Court this 20th day of June, 1958, and delivered in open Court in presence of both Assessors, Sirs Edward Sir and Judge, Jeffs.

By the Court

Registrar

IN THE LAND COURT OF NABLUS(APPELLATE CAPACITY)

S ettlement Appeal No. 17/38

For Service Only.

BETWEEN:

Shiekh Muhammad Salah, of Nablus. APPELLANT.

and

1. Shiekh Abdul Rahman Yacoub Kassem.
2. Abdul Kader Ez-Zein Ahmad.
3. Khalil Hamad Muhammad Kassem.
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

D e c r e e

This cause coming on for hearing this 30th day of June, 1938, before His Honour Judge W. Clive Curry, A/President Land Court Nablus, and His Honour Judge Muhammad Eff. Baradey, Judge Land Court Nablus, and upon reading the notice of appeal filed by Shiekh Muhammad Salah and the reply filed by the respondents;

IT IS THIS DAY ADJUDGED that the decision of the Land Settlement Officer dated 15.11.37 in cases Nos. 173, 316,317, and 319/Tireh be and is hereby set aside and the case remitted to him to determine the compensation (Including money and compensation for labour) payable by the appellant to the respondents in respect of their cultivation of the property in dispute and that such compensation be charged on the land and that the costs of this action do follow the event.

GIVEN under the seal of this Court this 30th day of June, 1938, and delivered in open Court in presence of both parties this 21st day of July, 1938.

By the Court

for REGISTRAR.

FAH.

IN THE LAND COURT OF MAURITIUS (TRANSFER JURISDICTION)

. A application number [illegible]

[illegible]

[illegible]:

[illegible] Dubourg [illegible], of Vallon.

[illegible]

b. [illegible] Vacoas [illegible].
2. [illegible] [illegible].
3. [illegible] [illegible].
4. [illegible] [illegible].

D e c r e e

This cause coming on for hearing this 8th day of June, 1966, before the honour Judge . Olivier Gurry, [illegible] Land Court Mauritius, and the Honour Judge [illegible], [illegible] Judge Land Court Mauritius, and upon reading the notice of appeal filed by [illegible] dated [illegible] and the reply filed by the respondents;

IT IS HEREBY ORDERED that the decision of the Land Settlement Officer dated 14.11.67 in cases Nos. 1073, 1104, 1117, and 1187/Tamarin be and is hereby set aside and the cases remitted to him to determine the compensation (including money and compensation for labour) payable by the appellant to the respondents in respect of their cultivation of the property in dispute and that such compensation be assessed on the land as at the date of this action so to bring the event.

COSTS follow the cause of this Court this 30th day of June, 1966, and Judgment in open Court in presence of both parties this 21st day of June 1966.

By the Court

[illegible]

IN THE LAND COURT OF NABLUS(APPELLATE CAPACITY)

S ettlement Appeal No. 17/38

For Service Only.

BETWEEN:

Shiekh Muhammad Salah, of Nablus. APPELLANT.

and

1. Shiekh Abdul Rahman Yacoub Kassem.
2. Abdul Kader Ez-Zein Ahmad.
3. Khalil Hamad Muhammad Kassem.
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

D e c r e e

This cause coming on for hearing this 30th day of June, 1938, before His Honour Judge W. Clive Curry, A/President Land Court Nablus, and His Honour Judge Muhammad Eff. Baradey, Judge Land Court Nablus, and upon reading the notice of appeal filed by Shiekh Muhammad Salah and the reply filed by the respondents;

IT IS THIS DAY ADJUDGED that the decision of the Land Settlement Officer dated 15.11.37 in cases Nos. 173, 316,317, and 319/Tireh be and is hereby set aside and the case remitted to him to determine the compensation (Including money and compensation for labour) payable by the appellant to the respondents in respect of their cultivation of the property in dispute and that such compensation be charged on the land and that the costs of this action do follow the event.

GIVEN under the seal of this Court this 30th day of June, 1938, and delivered in open Court in presence of both parties this 21st day of July, 1938.

By the Court

D. Hyeus 8

p/o REGISTRAR.

FAH.

IN THE [illegible] (CIVIL JURISDICTION)

Civil Appeal No. 37/58

[illegible]

[illegible]

1. [illegible] Tengku Razak.
2. [illegible] [illegible].
3. [illegible] [illegible].
4. [illegible] [illegible].

D e c r e e

This cause coming on for hearing this 30th day of June, 1958, before the [illegible] Judge, Court of Appeal, Land Court Tribunal, and the Honourable Chief Justice, [illegible] Judge and Court Judge, and upon reading the notice of appeal filed by [illegible] and the reply filed by the respondents:

IT IS HEREBY DECLARED that the decision of the Land Settlement Officer dated 16.11.57 in cases No. 176, 216, 217, and 218/Tiran be and is hereby set aside and the case remitted to him to determine the compensation (if any) payable and compensation for labour) payable by the appellant to the respondents in respect of their cultivation of the property in dispute and that such compensation be assessed on the basis and at the date of this action to follow the event.

AND THIS COURT DOTH FURTHER ORDER that the costs of this Court this 30th day of June, 1958, at Kuala Lumpur be paid out of the Land Court Tribunal Fund by the [illegible] parties.

Given under my hand and seal this 30 day of July, 1958.

By the Court

[illegible]

[illegible]

IN THE LAND COURT OF NABLUS(APPELLATE CAPACITY)

S ettlement Appeal No. 17/38

For Service Only

BETWEEN:

Shiekh Muhammad Salah, of Nablus. APPELLANT.

and

1. Shiekh Abdul Rahman Yacoub Kassem.
2. Abdul Kader Ez-Zein Ahmad.
3. Khalil Hamad Muhammad Kassem.
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

D e c r e e

This cause coming on for hearing this 30th day of June, 1938, before His Honour Judge W. Clive Curry, A/President Land Court Nablus, and His Honour Judge Muhammad Eff. Baradey, Judge Land Court Nablus, and upon reading the notice of appeal filed by Shiekh Muhammad Salah and the reply filed by the respondents;

IT IS THIS DAY ADJUDGED that the decision of the Land Settlement Officer dated 15.11.37 in cases Nos. 173, 316,317, and 319/Tireh be and is hereby set aside and the case remitted to him to determine the compensation (Including money and compensation for labour) payable by the appellant to the respondents in respect of their cultivation of the property in dispute and that such compensation be charged on the land and that the costs of this action do follow the event.

GIVEN under the seal of this Court this 30th day of June, 1938, and delivered in open Court in presence of both parties this 21st day of July, 1938.

By the Court

for REGISTRAR.

FAH.

محكمة أراضي نابلس المؤقتة بصفتها الاستئنافية

لائحة جوابية على الاستئناف المقدم ضد قرار مأمور التسوية لمنطقة طولكرم بالقضايا

١٧٢ / ٢١٦ / ٢١٧ / ٢١٩ / البلدة

المستأنف المجاب : الشيخ محمد خضر صلاح نابلس

المستأنف عليهم المجيبين : ١) عبد الرحمن مصطفى قاسم
٢) عبد القادر الزين أحمد
٣) خليل محمد محمد قاسم
٤) صالح خليل أحمد قعقص
جميعهم من سكان قرية البلدة (طولكرم)

جهة الإجابة : تبلغنا اللائحة الاستئنافية المقدمة من المستأنف المجاب المذكور وذلك ضد قرار خفض مأمور التسوية لمنطقة طولكرم في القضايا المذكورة وبما أن الاستئناف الواقع مخالف للقانون شكلاً وموضوعاً لذلك نتقدم بالإجابة عليه لما يلي رده وذلك للأسباب الآتية :

١- أن المستأنف لم يبلغنا صدوره عن قرار خفض مأمور التسوية ولم يبلغنا صدوره عن طلب الإذن بالاستئناف ومنح الإذن بالاستئناف حسب الأصول القانونية وهذا خطأ شكلي موجب لرد الاستئناف

٢- أن المستأنف المجاب لم يتقدم ببينة مقنعة تؤيد دعواه من أننا كنا نستغل الأرض قبل نصف محصول العشر مع العلم بأن مثل هذه البينة يجب أن تكون حسب ظروف القضية خطية لوجود أننا من نابلس وغريب عن ديارنا والمفروض أن تكون جميع اتفاقاته خطية ومع فقدان هذه البينة الجوهرية فإنه لم يقدم بينة شفوية حتى تؤيد ما ادعاه إذ أن الشهود الذين أحضرهم لم يقتنع بهم حضرة المأمور وظهر له كذب أقوالهم وتناقضهم الجوهري.

٣- لقد ثبت لحضرة حضرة مأمور التسوية بأننا تصرفنا في كامل الأرض مدة خمسة عشر سنة وأننا انتخبنا العدد في الادعاء فلم ندع بملكية كامل الأرض مع أن هذا في مقدورنا ويؤيدنا فيه القانون الذي هو لصالح من ادعينا نصف الأرض وأيدنا هو المستأنف في النصف بناء على عرف وعادة مرعية الإجراء في بلادنا بصورة وبلدتنا بصورة خاصة في مثل هذه الأمور ومن المعلوم أن العادة محكمة والمعروف عرفاً كالمشروط شرطاً وقد أيد نظرتنا جميع الشهود الذين دعوناهم وكانوا صادقين في أقوالهم :

٤- أنه ليس من العدل والإنصاف والمعقول أن نكد ونجتهد ونحرث مدة خمسة عشر سنة في حلة وغرس وإعمار قطعة أرض طويلة عريضة ويكون مقابل هذا المجهود المضني الشاق الطويل ناتج نصف الثمر الطيب حسب اعتراف المستأنف ولم يسبق أن جرى مثل هذا في أي قطر كان . مع العلم بأننا فقراء الحال ولا نملك شيئاً سوى هذا المجهود الشخصي وعرق الجبين الذي سكبناه في سبيل إعمار هذه الأرض هذه المدة الطويلة بقية المحصول

صحيفة
٢

على نفسه في مشيئة معينة . وقد تخصص لخفة المأمور مقدار المجهود الذي بذلناه في هذا السبيل وعاينه له
الحق الكامل في تطبيق قواعد العدل والانصاف كما نصت المادة صحيفة ٨٥٢ (٢) ١٠ من مجموعة دريتون من قانون تسوية الاراضي
وذلك فقد طبق هذه القواعد وبنى القرار بالنسبة للمجهود والخسائر الكثيرة وسائر الظروف :

٥ - اننا قد اصلحنا الارض وغرسناها وعمرناها هذه المدة الطويلة بناء على الترتيب المذكور فيكون لكل مجهودنا
حسب نية مبنية على عرف وعادة مرعي الاجراء ولكن هذا اقتنع به خفة مأمور التسوية من شهود عدول لو غرضه ولا
غاية لهم قطعاً فهل بعد التمام من تفضيل ؟

٦ - ان القرارات التي يشير الطرف المتأنف غير واردة ولا تنطبق على قضيتنا وظروفنا غير ظروف هذه القضية
وان القرار المعلل من قبل خفة مأمور التسوية الذي بحث مليا في الموضوع وسائر الظروف والمبني على اسباب
وجيهة كثيرة كافية لرد الاستئناف :

٧ - فيلاحظ هذه النقاط الحيوية والاسباب الجوهرية لطلب اولاً تبليغ المتأنف صورة عن هذه اللائحة الجوابية
ورد الاستئناف مع تغريم المتأنف جميع الرسوم والمصاريف القانونية واقبلوا فائق الاحترام

٢٨/٤/٢٢

المتأنف عليهم
عبد الغفار الحاج احمد

امانة معلي فهمي
ابو غضه

امانة حسن عبد الغني الشعيب

خليل الحمد القاضي

٢٠٠ رسم العريضة
١٠٠ رسم تبليغ الصورة للمستأنف
٣٠٠

True Copy

COPY.

Cases 173, 316, 317, 319/Tira.

Final Parcels Nos. 7733/11,
7776/24,25,26.

Case 173. Plaintiffs : Husein 'Abd ar Rahman Ya'qub Qasim
Case 316. 'Abd al Qadir Zabn Ahmad.
Case 317. Khalil Hamad Mahmud al Qasim.
Case 319. Muslih Khalil Ahmad abu 'Akafa.

Defendant : Muhammad Hasan Salah.

Decision of Settlement Officer,
Tulkarm Settlement Area.

The record of proceedings in these cases is found in No. 173/Tira. The cases are alike, and concern plaintiffs' allegations that, some 15 years ago(in case 317/Tira, 8 or 10 years ago) defendant handed over the parcels to them, one to each, on "Mugharasa" agreement whereby plaintiffs were to plant the land with fruit trees, maintain them in good condition, pay all expenses of cultivation, and in return receive one half the land and one half the trees upon it. Defendant maintains that there was never any such agreement, that plaintiffs agreed to cultivate the trees and look after the plantations in return for one half the produce of the trees only, and that defendant was to have borne, and did bear, all expenses in connection with the work, other than, of course, the labour of plaintiffs.

There was no "Mugharasa" agreement in writing. There was no agreement such as defendant cites in writing. In that matter, the parties are equally to blame.

Defendant's contention is that plaintiffs' tale is entirely imaginary, and that the plea of local custom in support of their claim cannot establish their case. Nor, he states, can there have been any question of mugharasa because some time limit would have to be given after which the land and trees would become the property of plaintiffs.

It is true that custom established a claim of this sort, but the question of a time limit is not so easily disposed of. Conditions being as they were, I see no reason to doubt that plaintiffs were de facto the owners of the half land and half trees, and it is notorious that the act in law which would settle them in title was not carried out in this or in 9 cases out of 10 of which I have personal knowledge. It is admitted by defendant that the cost of upkeep of the property is very low, and that would account for the ignoring of the time limit if cultivation and expenses by plaintiffs were not to continue, by the agreement, after the trees came into bearing. This aspect of the case corroborates my deductions from the evidence taken.

All witnesses agree that, whatever was the exact agreement, it was similar in all the cases now under review. I decided to hear verbal evidence in support of Plaintiffs', as well as defendant's, statements because it is impossible otherwise to decide a matter for which not one paper, except tax receipts, was produced.

There is definite evidence in favour of plaintiffs' story: of one who was present when one of the agreements was made; of another who was present at one agreement, but which he does not remember, and whose inference is that it was the customary "mugharasa"; and of tithe receipts showing that plaintiffs actually paid the taxes, though that by itself establishes nothing. Then there is the man, Hasan Kharewi, whom defendant specially asked should be called. This man originally made an agreement with defendant on the same terms as the others. He had started by asking half the land and half the trees and defendant refused at first, saying that he should have half the trees only.

Finally it was arranged (verbally of course) that this man should come in on similar terms to the others, which I believe he did in the genuine understanding that these terms were the customary mugharasa ones. After a few years, he could no longer provide the oxen to cultivate the land, and he was evicted by defendant, also according to the terms of the agreement. When asked by defendant why he should leave the land if he was to have had half, he replied that at that time he was so poor that he could not have accepted all the land had it been offered. Incidentally and importantly, from this and other evidence emerges the fact that this man was compensated for the fencing he had done around the parcel, by defendant, on his giving it up, or was given a gratuity of LP.12 or so for that or for some other reason. This shows that it was not in the agreements that defendant should pay all expenses of cultivation and maintainance. Defendant's witnesses do not help his case. One relates how defendant sold the produce to another in 1931- i.e. his half share of the produce - and, when plaintiff objected and said he had a better right to it than any "foreigner", was told he had half the trees. The same witness says that at the takhmis the land was shows in both defendant's and plaintiffs' names. The second witness was not present at the agreement, and only knows that defendant once refused to give one of the plaintiffs half the land and half the trees. The third witness states the circumstances of the leasing by defendant of half the trees to another and adds that defendant said "You own half the trees" also, and again "You own half the fruit."

Defendant's 4th witness, Hasan Kharewi, has already been mentioned.

The deduction the most likely to be true from defendant's witnesses' statements is that plaintiffs in these parcels owned half the trees. The deduction the most likely to be true from plaintiffs' witnesses and the testimony of independent witnesses and the custom of the village is that there was a mugharasa agreement whereby plaintiffs were to get half land and half trees. Now, it is a fact that at the present time the trees are more valuable than the land. It follows that all the improvement in the land for some 15 years past has been carried out by plaintiffs by their own labour and at their own expense. Defendant was an absentee proprietor. The land is not registered in the Tabu in his name. It was cultivated by plaintiffs who paid, at least, part of the taxes, and cultivated under conditions that would prima facie support a claim for a possessory title to the whole land in their favour, had they so claimed. I do not see any excuse for defendant's not having registered the property in his name. I see no excuse for his omission to execute a deed laying down the terms and privileges of the alleged arrangement with plaintiffs, if only for the consideration that an adverse claim to the land was possible and was, in fact, made.

For these reasons, I find for plaintiffs, and order that each parcel shall be registered in one half share of land and trees upon it in name of defendant and one half of land and trees upon it in the name of the plaintiff, who claims rights in each particular parcel.

Defendant is to pay LP 10.000 hearing fees.

Read to parties in Tira this 15th day of November, 1937.

15.11.37. (Sgd) SETTLEMENT OFFICER,

TULKARM SETTLEMENT AREA.

LAND COURT FILE

1. Application for leave to appeal from the decision of L.S.O. - 23/12/37 - To be translated.

2. Supplementary application to no. 1. above 1/1/38 - To be translated.

3a. Refusal to grant leave by L.S.O. 16/12/37 (7 copies typed & ready)

3. Decision of L.S.O. Tulkarm 15/11/37 (4 copies typed ready)

4. Statement of Appeal to L. Court Nablus in its Appellate Capacity ~~14/38~~ 4/4/38 - To be translated.

5. Statement of Reply to Statement of Appeal at Land Court Nablus. 23/4/38. - To be translated.

6. Application for leave to appeal granted by Land Crt. Nablus 29/3/38. (7 copies typed ready)

GOVERNMENT OF PALESTINE.

Telephone No. 33.

In reply please quote:

No. Case No. 173/Tira

LAND SETTLEMENT OFFICER,
TULKARM SETTLEMENT AREA,
P.O. BOX 12.

Tulkarm, 16th December 1937.

Application for leave to appeal from my decision in cases 173,316,317,319/Tira by Muhammad Hasan Salah.

Paragraphs numbered as in application.

2. This is a statement of claim, and is not appealable.

3. The question of prescriptive rights did not arise, and the proposed argument is irrelevant to the case.

4. See statement of applicant's wakil at bottom of page 5 and top of page 6 of proceedings; where he states that all the plaintiffs have similar cases. Each case was taken separately and each plaintiff examined. Witnesses were in common. All applicant's witnesses were called and examined.

5. This is discussed in my decision.

6. See 5.

7. Applicant appointed his son as wakil, and made no application to be heard as a witness.

8. Applicant himself is equally guilty with plaintiffs in this matter. Under part B. 5 of his claim he states "I do not know whether this parcel is registered or not, or in whose name". This point is also dealt with in my decision.

Leave to appeal is refused on all points.

LAND SETTLEMENT OFFICER
TULKARM SETTLEMENT AREA

SETTLEMENT OFFICER,
TULKARM SETTLEMENT AREA.

JAO/GB

In the Land Court of Nablus
Sitting as a court of appeal

Statement of reply to the appeal made from the decision of the Land Settlement Officer. Tulkarm Sub-District in cases No 173, 316, 317 and 319 Et-Tira village.

Sheikh Mohamad Effendi Salah
of Nablus — Appellant.

v

1. Hussein Abdul Rahman Yacoub Kassem
2. Abdul Kader Zaben Ahmad
3. Khalil Hamad Mohamad Kassem
4. Muslet Khalil Ahmad Akafeh

All of Et-Tira village, Tulkarm Sub-District — Respondents.

Statement of Reply

On 17/4/38 we were served with a statement of appeal filed by the above named appellant

Translation

Case No. 173. Tira
Tulkarm Sub-District

Memorandum of claim

Sub-District : Tulkarm
village : Et Tira
No. of claim : ~~442~~
~~Reg~~ Reg. Block name ... ~~No 7733~~
Provisional Parcel No. 8
Final Parcel No. ~~11~~

---

1. Name of person in whose favour right to registration is claimed and full address

~~Hussein Abdul Rahman Yacoub Kassem~~
of Tira
~~Sheikh Mohammad Hassan Salah~~
of Nablus

Share claimed
$\frac{1}{2}$

2. Category of Land : ~~Miri~~

3. Nature of claim : ~~Possession~~

~~4. How acquired : from Sheikh Mohammad~~
~~Part or share : 1/2~~
~~Date : 1919~~

4. How acquired
Part or share 1/2
date 1919

From whom: Sheikh Mohamad Salah by purchase from Nasser Sahara and being in uninterrupted possession for a period of 8 years.

Manner of acquisition: 15 years ago I agreed with the said Sheikh Mohamad to plant this parcel with trees so that I may take half of the land and the trees in consideration of my work and the expenses I pay for planting the said land and making it useful for plantation. I planted all of the said parcel and ~~have~~ I have been in possession thereof according to the said agreement without any ~~disturbance~~ disturbance whatsoever, with the knowledge of the said Sheikh Mohamad. This is my claim

Nasser Sahara El Ahl who was in possession of all of this parcel by himself alone without any disturbance for a period of ~~20~~ about 20 years.

By old unregistered purchase from said person who was in possion thereof and by uninterrupted possession for

حضرة الاخ ابراهيم افندي نجم المحترم

تحية واحتراما - وبعد اخبركم ان دعوى عليه الشيخ علي
ضد مايرموشه تعين لتاريخ ١٦/٢/٢٩ وبما انه لا يمكن
الذهاب لبيانا بذلك التاريخ فارجو ان تدخلوا بها حضرتكم
واظن ان الدوسية موجودة عندكم

هذا وتفضلوا بقبول فائق الاحترام

a period of 8 years, nearly, since the date of the said purchase. After that he ceased to ~~be in~~ have possession of half of this parcel according to the agreement between me and him.

5. Name and Interest of Person registered.

I do not know whether it is registered in the Land Registry or not.

6. By whom is House and Land Tax paid (State annual amount)

I pay tithes for all of my property in one instalment. ~~During I~~ During few years I used to pay the tax for the half of Sheikh Mohamad.

7. Description of parcel: Planted with vines, ~~fig trees, appelb appe~~ apples trees, ~~olive trees~~, appro: fig, apple, olive, apricot trees and ~~eucalypts~~ eucalyptus.

Boundaries: North: Road; East: Threshing floor; South: Road and parcel 7776/20; west: Parcels 7777 an 7756.

حضرة الفاضل السيد ممدوح الدبري المحترم

تحية واحتراما

ارسل لحضرتكم في طيه صورة ~~قرار الحكم~~ عن قرار المحكمة المركزية في الاستئناف الذي قدمه المحامي المستر الياس في قضيتكم مع ورثة سليم علي بك سلام ~~...~~ ومن الاطلاع عليه ترون انا قد ربحنا دعوانا ضده وحكم لنا ~~...~~ بالمصاريف وخسر الثاني بحاماة ~~...~~ وسوف نتابع الان المسألة في دائرة الاجرا

هذا وتفضلوا بقبول فائق الاحترام

8. area claimed 36 dunums.

9. Other Rights affecting servitude : none

~~none~~

10. Is ~~petitioner~~ Partition desired : none

~~None~~

11. charges ~~on~~ on Parcel or share : none

12. Supporting documents : none.

13. Additional statement or details if any. (If recorded in unofficial Land Book state also village Parcel No.-- and unofficial Land Book folio No ---)

Some 15 years ago, I agreed with Sheikh Mohamad Hassan Salah to plant this parcel with trees. The value of the land at that time was cheap. We agreed that I should take half of the land and the trees in consideration of my labour ~~and the~~ and expenses. ~~I pay~~ I planted it with trees and the trees gave fruits, and each of us was in possession of his own half. This was the knowledge and under the supervision of the other party. Neither of us disturbed the other in his possession. We used to lease the fruits and ~~devide~~ share the income thereof. In some years he used to lease the half belonging to him only. These facts are known by

every body in the village and in the adjoining villages. The value of the land having risen now, the said Sheikh wants to have all the land registered in his name. Whereas I am in ~~nature~~ uninterrupted possession of this land for a period not less than 15 years, I therefore pray that half of this land with the trees thereon be registered in my name.

14) I Hussein Abdul Rahman Yacoub Hassem of Lira, Tulkarm subdistrict, hereby take oath and swear (or solemnly affirm) that the particulars stated by me in the Memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

~~Thump~~
Thumb Print of:

Hussein Abdul Rahman Yacoub Hassem

Read over to signatory and sworn to and signed by him in my presence

Ihsan Es-Said
Assistant settlement Officer
14/1/35
Tulkarm.

15. We the undersigned, hereby declare that to the best of our knowledge and belief the above statement is true and correct.

Sgd

Mohamad Hassan El Kassem

Sgd

Mohamad Suleiman Bestand

Sgd: Abdul Rahman Abu Hasika

Members of Committee.

Translation

His Honour the President of the Land Court,

Nablus.

A Supplement ~~further~~ to my application for leave to appeal against the decision of the Land Settlement Officer of Tulkarm in cases Nos. 173, 316, 317 and 319.

Appellant - Sheikh Mohamad Ibn Eshaik Hassan Salah.

V.

Respondents - 1. 2. 3. 4. } all of ~~Tulkarm~~ Sirah, District of Tulkarm.

On 23/12/37, I filed an application ~~was lodged~~ for leave to appeal ~~against~~ from the decision of the Land Settlement Officer in the cases above mentioned. As there are important points decided by the Supreme Court in L. A. 20/33 [JORF V. SHEHAB ED-DIN], it is therefore prayed that leave to appeal be granted on this important point of Law:

Will lapse of time run in favour of a possessor, a cultivator, who is authorised so to possess by the owner?

A Judgment of the Supreme Court decided the following points:

1. ~~The holding of a "Mugharis" grower is in the~~ A cultivator by way of Mughara is a trustee

~~Nature of a trust~~

2. Such possession is ~~the possess~~ to ~~which is~~ a result of ~~agreement~~ agreement like that of a lease or ~~pledge~~ Mortgage.

3. In such a case, lapse of time does not run against the owner. Hence the Supreme Court decided in L.A. 90/32, P.L.R. Vol. I. p. 846 that in a "Muqhasa-sab" Agreement providing for half the land and ~~plantations~~ trees is a disposition prohibited by Art. 11 of the Law of Disposition of Immovable Property, and that the "Muqharis" ~~grower~~ cultivator, has a right only in claiming the amount he has expended on such land. Therefore the Land Settlement Officer is precluded from Ordering that half the land be registered in the names of the ~~growers~~ cultivators as this is Contrary to the Judgment of the Supreme Court and the Law, especially as the Claim of the Respondents was never established in the first ~~instan~~ place, as this is clear from my first application.
A certified Copy of the Judgment of the Supreme Crt L.A. 20/33 is hereby attached.

It is prayed that leave to appeal be granted.

Signed - Mohamad Salah,
of Nablus.

1/1/1938.

سعادة رئيس محكمة استئناف نابلس المحترم

عطفاً على طلب الاذن باستئناف قرار مأمور التسوية بطولكرم رقم ١٧٢ و٢١٦ و٢١٧ و٢١٩

المستأنف: الشيخ محمد ابن الشيخ حسن افندي صلاح من نابلس.

ضد

حسين عبد الرحمن يعقوب قاسم
عبد القادر الزبن
خليل محمد محمد قاسم
مصلح خليل ابو عقفة

من قرية الطيرة طولكرم

بتاريخ ٢٢/١٢/٢٧ قدمت اذن باستئناف قرار مأمور التسوية في القضايا المشار اليها اعلاه وحيث يوجد نقطة قانونية هامة اقرتها محكمة الاستئناف العليا باستئنافها رقم ٢٠/٢٢ (جورف ضد شهاب الدين) لذلك اطلب اعطاء الاذن بالاستئناف للنقطة القانونية الهامة.

هل يعتبر مرور الزمان بالنسبة للحراثي الذي يعمل بأذن صاحب الارض

ان قرار محكمة الاستئناف العليا ينص على النقاط الاتية:

١) يد المغارس يد امانة.

٢) ان التصرف بهذه الحالة بمثابة التصرف المأذون ناتج عن عقد كالاجارة والرهن.

٣) وفي هذه الحالة لا يمكن ان يجري مرور الزمان بحق الطرف الثاني

ولذلك قررت محكمة الاستئناف العليا رقم ٢٢/٩٠ صحيفة ٨٤٦ من مجموعة قاضي القضاة ان المغارس على نصف الارض والشجر معاملة تصرفا ممنوعة بموجب المادة من قانون التصرف بالاموال الغير منقولة وان كل مالك ان يعامله ان يطالب بما صرفه على الارض

لذلك لا يجوز لمأمور التسوية ان يسجل نصف الارض على المزارعين حيث ان قراره مخالف لقرار محكمة الاستئناف العليا ومخالف للقانون ولا سيما

٢٠٢٠٥

أن ادعاء المدعين المستأنف عليهم لم يثبت في الاساس كما هو مبين ضمن الاستدعاء الاول. لهذا اقدم لسعادتكم صورة مصدقة عن القرار المذكور رقم ٢٢/٢٠ متعلق بهذا الاستدعاء

الطلب اعطاء الاذن بالاستئناف وتفضلوا بقبول فائق الاحترام

محمد صلاح من نابلس
١/كانون ثاني ٩٢٨

GOVERNMENT OF PALESTINE

IN REPLY PLEASE QUOTE
No. PC.L.A. 12/38 - 4810

THE SUPREME COURT.
JERUSALEM.

28 July, 1939.

Mr. N.Germanus,
Advocate,
Jerusalem.

Sir,

Subject:- P.C.L.A. No. 12/38 -
Sheikh Mohamad Salah
v.
Hussein Abdul Rahman
Yacoub Kassem & others.

I have the honour to inform you that the record of appeal in the above case has been despatched to-day to the Registrar, Privy Council, and you are required to take notice accordingly.

I have the honour to be,

Sir,

your obedient servant,

CHIEF REGISTRAR.

Despatched 29th July 1938

GOVERNMENT OF PALESTINE

IN REPLY PLEASE QUOTE
No. P.C.L.A.12/38 - 5036

THE SUPREME COURT,
JERUSALEM.

// August 1939.

Mr. N.Germanus,
Advocate,
Jerusalem.
- - - - - - - - - -

Sir,

Subject :- P.C.L.A. No.12/38 -
Sheikh Mohamad Salah
v.
Hussein Abdul Rahman
Yacoub Kassem & Others.

Further to my letter of the 28th July, 1939 notifying you of the despatch of the Record in the above appeal to London, I have the honour to enclose copy of a letter dated 3rd August, 1939, which I have received from the Registrar of the Privy Council. Your attention is particularly drawn to para.2 of the letter.

I have the honour to be,

Sir,

Your obedient servant,

CHIEF REGISTRAR.

PRIVY COUNCIL OFFICE.
Dowing Street.
London, S.W.1.
3rd. August 1939.

Sir,

Sheikh Mohammad Salah — Appellant

v.

Hussein Abdul Ruhman Yacoub Kassem and Others — Respondent

I have the honour to acknowledge the receipt of the Record of Proceedings in the above Appeal, which has been duly registered as Privy Council Appeal No.66 of 1939.

In pursuance of Rule 34 of the Judicial Committee Rules, 1925, the Appeal will be dismissed at the expiration of two months from this date, if no step is taken by the Appellant within that time in prosecution thereof.

I have the honour to be,
Sir,
Your obedient Servant,

(Sgd) Colin Smith
Registrar of the Privy Council.

The Registrar,
The Supreme Court,
Palestine.

Amen Tak

C.A. No 90/32 Rot. Vol. III p. 1099
C.A. No 90/33 " Vol. V p. 1793

In C.A. 221/38 the court of Appeal decided two things: —

1) Confirmed the finding of fact made by S.O. in that there was a "Hugharasa" agreement. It, further, held that S.O. was entitled under the proviso to Sect. 10(3) of the Land (Settlement of title) Ordinance to have regard to equitable as well as legal rights etc. - - - - -

2) Court agreed with the remark of S.O. that the land was cultivated by the (Plaintiffs) Appellant here under conditions that would prima facie support a claim for a possessory title to the whole land in their favour, had they so claimed.

Now as regards (1) above the Court of appeal should have confirmed the judgment of the Land Court sitting as a court of appeal in that the Land Law would have been applied + the 'Hugharasa' agreement held to be void.

This is so in view of the 2 decisions of Court of Appeal in C.A. No 90/32 Rot. Vol. III p. 1099
C.A. No 90/33 " Vol. V p. 1793.

Further, the judgement of J. Abdul Hadi must be noted. He says that he agrees with the result of the case in view of Sect. 54 (b) of Land Settlement Ordinance. Sect. 54 (b), however, deals with "a person who is in possession". Possession was never claimed or proved in this case.

See p. 54 of Record

Authority?

Possession was under licence.

P.T.O

2) ~~Possession~~
There cannot be a claim of adverse possession in this case in view of the finding of fact that there exists a "Shgharasa" agreement:

C.A. 20/33

It is useful to note judgment of (J. Manning) in:
L.A. 1/36 Rot. Vol. VII p. 340

In Privy Council Appeal

Previous cases on disposition which are void — Judgt. of Najeeb Bey.

Sheikh Mohamad Salah v Appellant.

v

Hussein Abdul Rahman Hassen and others Respondents

1. Disposition defined: Land Transfer Ordinance sec. 2
Drayton volume 2, P 881

2. Disposition, requirements of: Land Transfer Ordinance sec. 4
Drayton volume 2. P 881 and 882

3. Mugharasa is disposition within sec 2 of Land Transfer Ordinance
(a) Civil Appeal No 90/32, Law Reports of Palestine vol 1 P. 846
Sheikh Muhamad Haj Abdallah v Muhamad Abd Er-Rahim Murib
(b) Civil Appeal No 90/33 between same parties, ~~Levant~~ Roletary
Law Reports vol 5 P. 1793

4. In an agreement of Mugharasa, the planter is a trustee and no prescription would run against the other party: C. A. 20/33 Ahmad Hussein El-Jorf and others v Mohamad Shihab Ed-Din and others. Copy of judgment attached (not reported)

5. Land Law is to be applied by Land Settlement Officer: Land Settlement of Title Ordinance Sec 10(3) Drayton vol II P 857

It must be noted that the proviso to sec. 10(3) applies to the Ottoman Law and enactments issued by the British Military Administration as to Practice & Procedure etc.. but it does not apply to legislation enacted by the Palestine Legislative authorities such as the Land Transfer Ordinance which forms at present a part of the Palestine Laws.

Provision as to equitable rights not applicable to legislation based after occupation.

TRANSLATION.

Security for costs of Appeal to His Majesty in Council

In the Supreme Court
Sitting as a Court of Appeal,
Jerusalem.

Case No. ~~Privy Council Appeal~~ ~~A.I.A.P.C~~ ~~P.C.I.A~~ 12/38. 2/40

Sheikh Mohammad Salah. APPELLANT

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zahn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

Whereas the above named appellants have applied to the Supreme Court of Appeal, Jerusalem for leave to appeal to his Majesty in Council from the judgment of the Supreme Court of Appeal, Jerusalem in Civil appeal No. ~~X~~24/40 delivered on ~~10.10.38~~ 14.5.40, and ~~he was~~ they were granted leave on ~~22.11.38~~ 7.5.40 to appeal to his Majesty in Council and ~~was~~ were ordered to file a guarantee in the amount of £.300.

Now, we therefore, the Arab agricultural Bank at Jerusalem do hereby promise that we will pay to the above named respondent~~s~~ all and any costs that the appellants may be ordered to pay to ~~them~~ him in respect of the said appeal together with any damages or loss caused by the appeal which the respondent~~s~~ may be legally entitled to recover in the event of the appellants not obtaining an order granting ~~him~~ them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellants to pay the Respondent~~s~~'s costs of the Appeal (as the case may be), to the amount of £.300.

In witness whereof we have hereunto affixed our seal and signatures this ~~15th~~ day of ~~December~~, 1940.

(Sgd) Abdul Hamid Shuman.

Seal of the Arab Bank Co. Ltd.

witness Musbah El Kazimi

witness Abdul Rahim Al Sharif.

Land Appeal No.20 of 1938.

In the Supreme Court sitting as a Court of Appeal.

BEFORE:- Baker Ag. J., Khaldi J. and Khayat J.

Ahmad Hussein El-Jorf and others. APPELLANT.

V.

Muhammad Ibn Khalil Shihab Ed-Din and others. RESPONDENTS.

Suliman Abu Ghazaleh for Appellants.

Ouni Bey Abdul Hadi and Sheikh Ragheb Aby Es-Seoud for Respondents.

J U D G M E N T.

We are satisfied that the contract in issue in this case is one of "Mugharaseh" (Partnership for planting trees), a common and well known form of contract in this country, whereby one of the parties offers the land and the other party provides the labour and trees and the planted property is, after a certain period, divided between the partners in a proportion agreed upon in advance. In such a case the planted property is, after a certain period, divided between the partners in a proportion agreed upon in advance. In such a case the planter is a trustee and no prescription would run against the other party and in spite of the Tabu Registration, it is merely a licensed possession arising out of a contract such as a lease or mortgage.

The Appellants having, instead of recovering the land in accordance with the said contract, elected to accept to sell their share in the planted land for 1,000 French Napoleons, we are of opinion that the judgment should be confirmed and the Appeal dismissed.

The Appellants will, however, have the liberty of filing an action in the competent Court claiming the said amount on the authority of Land Appeal No.6/31.

The Appellants are ordered to pay the costs and advocate's fees assessed at £P.3.-

IN THE PRIVY COUNCIL.

OPINION.

Appeal of:

Sheikh Mohamad Salah of Nablus.

AND

1. Hussein Abdul Rahman Yacoub Kassem.
2. Abdul Kader Es Sabn Ahmad.
3. Khalil Hamad Muhamad Kassem
4. Musleh Khalil Ahmad Akfeh.

This appeal was decided on two points namely

1. That although a Mugharasa agreement is a disposition within the meaning of the Land Transfer Ordinance Sec. 11 (Drayton, Cap.31, p.361) yet the Land Settlement Officer is to apply the Land Law in force at the hearing of the action and, at the same, he is directed to have regard to equitable as well as to legal rights.

2. That this land was cultivated by the Plaintiffs under conditions that would prima facie support a claim for a possessory title to the whole land in their favour, had they so claimed.

With regard to the first point that a Mugharasa agreement is a disposition within the meaning of the Land Transfer Ordinance and is therefore null and void there is ample authority, apart from Sec. 2 of the Land Transfer Ordinance, which defines a "disposition":

(a) In Civil appeal No. 90/38, Sheikh Muhamad Haj Abdallah v. Muhamad Abd Er-Rahim Murib (Palestine Law Reports volume 1 p. 346 where the facts were similar to this case, the Supreme Court of Appeal held: that this was a disposition under Sec. 11 of the Land Transfer Ordinance and was therefore null and void but that the Appellant could recover the money spent by him in planting the land

(b) In Civil Appeal No. 90/33 between the same parties (Rotenberg's Law Reports Volume 5 page 1793), the same principle was applied.

(c) In C.A.20/33, Ahmad Hussein El Jorf and others v. Muhamad Ibn Khalil Shihab Ed-Din and others the same principle was applied. Copy of Judgment attached herewith. This judgment is now on appeal

to Privy Council.

The principle that every disposition of Land under Sec 11 of the Land Transfer Ordinance had been the established law in Palestine since 1920 and the Courts of Palestine have a applied it rigidly without exceptions: the following references may be given by way of example:

(a) C.A. No.88/29 Jacob Behor v. the Anglo Palestine Co. Ltd. (Rotenbergs Law Reports vol 1 P.188) held that, "So far as the sale is concerned, the agreement is clearly within the terms of Sec 11, and is to that extent mull and void".

(b) C.A. No. 51/26, Mohamad Saleh el Swaise v. Selimah bint Sliman el Haddad (Rotenberg's Law Reports Vol IV Page 1491) held that:"The Power of Attorney in this case is a disposition within the meaning of the Land Transfer Ordinance 1920, and that as such it is null and void by virtue of the provisions of Sec. 11 of the said Ordinance, save that the Respondent is entitled to recover from the Appellant any money paid to the latter in respect of the transactions."

(c) C.A. 82/33, Michael Harris v. Daniel Duncher (Rotenberg's Law Reports volume III Page 1188) held that "The contract is an agreement for sale and is not invalidated by Sec. 11 of the Land Transfer Ordinance."

(d) C.A. 105/28, Isaac Gavrelowitz v. Ali Ibn Hassan Abu Duyuk, (Rotenberg's Law Reports volume I.P.392) it was held that " The document was an agreement to which the written consent of the government was not obtained under Sec. 11 of the Land Transfer Ordinance and therefore it was null and void and therefore any attempt to recover money on promissory notes which enamate from an invalid agreement must be void."

(e) C.A. No. 24/30, Haj Khalil Mohamad Taha v. Saleh Muhamad el Shible (Rotenberg's Law Reports volume 1 P.397). It was held that "If the provisions of the contract relating to possession in fact constitute a mortgage of the land pending registration the transaction is an unregistered disposition and is therefore null and void under the Land Transfer Ord. 1920."

(f)

(f) C.A. No. 36/25; the Palestine Land Development Co. Ltd. v. J. and I. Salzman. (Rotenberg's Law Reports vol III P.1092). It was held that " In view of Sec 11 of the Land Transfer Ordinance the District Court was right in declaring the agreement invalid".

Having established that a disposition of Land under Sec 2 of the Land Transfer Ordinance is null and void by Sec. 11 of the same Ordinance let us proceed to consider the first point on which the appeal was decided, namely that the Settlement Officer should have applied the land law in force and should have had regard to equitable rights.

Sec. 10 of the Land (Settlement of Title) Ordinance (Drayton Cap.80, P.357), states that: "a settlement Officer shall apply the Land Law in force at the date of the hearing of the action".

The land Law at the hearing of this action is according to Art. 46 of the Palestine Order-in-Council the Ottoman Law as contained in the Ottoman Land Code and the Law as contained in the Land Transfer Ordinance 1920, and the Ordinances amending same. This is the substantive law which ought to be applied by the Land Settlement Officer. If such law is applied it follows that this appeal should have been dismissed by virtue of Sec 11 of the Land Transfer Ordinance and by virtue of the several cases above mentioned.

But there is the proviso to Sec. 10 of the Land Settlement Ordinance. Now what does that proviso mean, does it mean that the equitable and legal rights should override the provisions of the substantive law or does it apply only to rules of Practice and Proceduce as contained in any rule of the Ottoman Law or made by the British Military Administration with regards to hearing actions based on unregistered documents or with regard to rules of evidence contained in the Ottoman Code of Civil Procedure or the Ottoman Civil Code?

This question was considered and answered by Mr. Justice Copland in Land Settlement Appeal, Jaffa No.18/32, Government of Palestine v. Villagers of Sajad and others (Rotenberg's Law Report volume II page.675) where he says: "The doctrines of equ equity are foreign to the original jurisprudence of this country, but the Land Settlement Ordinances and the Land Courts Ordinances lay down definitely that the Land Settlement Courts and the Land Courts shall apply them and they cannot therefore be disregarded. It is perfectly true as the Settlement Officer states, that an equitable right cannot be established in contr diction to the clearly expressed provisions of substantive law or, in other words that Equity cannot create a right that the

law prohibits."

Although this case is one of the lower courts, it appears to give a correct interpretation of the proviso to Sec. 10 of the Land Settlement Ordinance.

2. To come to the second point on which this appeal was decided namely that the claim of the Plaintiffs would support a claim for a possessory title in their favour had they so claimed.

Is it so ?

(a) In the first place there was no claim for a possessory title before the Court and therefore this ground could not be entertained by the Court. Moreover, it was not the subject of any argument.

(b) In order to succeed on a claim for a possessory title the possession of the claimant must be adverse.

This principle is supported by the following:-

1. Article 23 of the Ottoman Land Code.

2. E.s. Jaffa No.18/32; government of Palestine v. villagers of Sajad and others (Rotenberg's Law Reports vol. II P.672, referred to herein above.

3. Land Appeal 64/24; Mary Eugenie Henriette Estrangin v. Tayyans (Rotenberg's Law Report vol II P.649 where Mr. Justice Jarallah said,"Similarly, the lessee of a property by virtue of a contract of lease, is not entitled to set up a plea of prescription against his landlord unless he holds the property as an owner. So is the position as between depositor and depository Lender and borrower.

4. L.A.135/26 Abdallah Abd El Hafez and another v. Abdel Kadar Khalil Salman,(Rotenberg's Law Reports volume V P.1729, where the Learned Senior Puisne Judge said, "Having regard to the terms of Article 20 of the Land Code it would, in my opinion be inconsistent to hold that a ten year's occupier could obtain a title against a registered owner. Article 20 prevents the registered owner from enforcing his right by action

after ten year's adverse possession. But while it bars his remedy it does not destroy his right and so long as he has a right to the land even though he cannot enforce by action it would be inconsistent to hold that the occupier had also acquired a right which was capable of registration."

5. L.A. No.121/26 Mahmud Ahmad Salameh and others v. Saleh Ibrahim Ismail. (Palestine Law Reports vol I P.234) Corrie J. said,"It is true that the principle that possession by one heir is possession by all heirs does not apply to co-owners whose title arises otherwise than by inheritance from a common ancester. It follows that one co-owner (who is not a co-heir) can set up adverse possession as a defence to a claim by another co-owner based on their common title.

   But in order that such defence may be sustained, the possession by the Defendant must clearly be adverse to the title by co-ownership. Mere cultivation of the land which might have been cultivated as a co-owner, is not sufficient to cause time to run in favour of the Defendant. Time will only run in his favour from the date of some act which implies a clear denial of the title of co-ownership.

6. C.A. No.4/39, Nahum wilbush and another v. Russian Ecclesiastical Mission (Levanon Law Reports vol V P.79 Judgment by Manning J. "Before the Settlement Officer, the present Respondent succeeded on the ground that they had been in possession of the disputed land without interruption for the period of prescription------- The Settlement Officer did not consider it necessary t hear any evidence from the Respondent and it is possible that he might have meant that on the evidence before him he was satisfied as to the Respondent's claim to <u>adverse</u> possession, but he has not said this, and we do not feel justified in assuming <u>that he meant to say it -------</u>". The appeal was allowed.

Land Appeal No. 20 of 1938.

In the Supreme Court sitting as a Court of Appeal.

BEFORE:- Baker Ag. J., Khaldi J. and Khayat J.

Ahmad Hussein El-Jorf and others. APPELLANT.

V.

Muhammad Ibn Khalil Shihab Ed-Din and others. RESPONDENTS.

Suliman Abu Ghazaleh for Appellants.

Ouni Bey Abdul Hadi & Sheikh Ragheb Aby Es-Seoud for Respondents.

J U D G M E N T .

We are satisfied that the contract in issue in this case is one of "Mugharaseh" (partnership for planting trees), a common and well known form of contract in this country, whereby one of the parties offers the land and the other party provides the labour and trees and the planted property is, after a certain period, divided between the partners in a proportion agreed upon in advance. In such a case the planted property is, after a certain period, divided between the partners in a proportion agreed upon in advance. In such a case the planter is a trustee and no prescription would run against the other party and in spite of the Tabu registration, it is merely a licensed possession arising out of a contract such as a lease or mortgage.

The Appellants having, instead of recovering the land in accordance with the said contract, elected to accept to sell their share in the planted land for 1,000 French Napoleons, we are of opinion that the Judgment should be confirmed and the Appeal dismissed.

The Appellants will, however, have the liberty of filing an action in the competent Court claiming the said amount on the authority of Land Appeal No. 6/31.

The Appellants are ordered to pay the costs and advocate's fees assessed at £.3.

Land Appeal No. 20 of 1936.

In the Interest Court of Kenya, at Nairobi.

BETWEEN:- BACON ..... Appellant.

AND: Martin J. and Others.

AND: Martin J. and Others. ..... Respondents.

V.

Motor and the Kenya Highland Ed-Coin and others.

Solicitors for the Appellants.

Messrs. Ryan, Smith & Smith Kenya Advocates for Respondents.

J U D G M E N T .

We are satisfied that the appellant is liable in this case in one of the Kenyan Interpretation plantation cases, a common and well known form of contract in this country, whereby the landowner offers the land and his other property, provides the labour and pays and the plantation property, enters a certain proportion, arrived between the parties from production agreed upon in advance. In such a case the plantation property, after a certain period, divided between the parties in a proportion agreed upon in advance. In such a case the plantation is a business and no partnership result from a mere other party and in spite of the term participation, it is merely a lease and connected arrangement such as a lease or rent.

The Appellant's contention, instead of recovering the land in accordance with his rent contract, attempted to induce the Lunin court to the plantation land. The Lunin court, on the ground of opinion that the Lunin court cannot be entitled to the Appellant court.

The Appellant will, however, have observed of the fact on action in the Lunin court claiming the land as a tenant in authority of land owner.

The Appellants was unable to prove the contract and therefore the court dismissed the suit.

18th July,1940.

Messrs. H.W. Clarkson Wright & Co.,
3 New Square,
Lincoln's Inn,
W.C.2.

Dear Sirs,

Further to my letter of the 20th June on the subject of the appeal of Sheikh Mohamed Salah (Privy Council Appeal No.66/39 against Hussein Kassem and others, I enclose an opinion on the appeal, with special reference to the law of Palestine.

As you see, I did not deal with the cross-appeal.

I shall be grateful to know whether you desire any additional information on the law of Palestine so far as it is involved in the appeal and cross-appeal.

Awaiting your acknowledgment.

I remain,

Yours faithfully,

٥٠٣
٩٢٧

سند تعهد لتأمين مصاريف استئناف لمجلس الملك الخاص

في محكمة الاستئناف العليا بالقدس

نمرة القضية ~~١٢~~ ٥ سنة ~~١٩٣٨~~ ١٩٤٠ استئناف لمجلس الملك الخاص

المستأنفين: ~~الشيخ محمد فلاح من نابلس~~

المستأنف عليهم: ~~١) حسين عبد الرحمن يعقوب قاسم~~

~~٢) عبد القادر الزين احمد~~ ١٨

~~٣) خليل حمد محمد قاسم~~

~~٤) صالح خليل احمد عقله~~

~~جميعهم من قرية الطيرة – قضاء طولكرم~~ .

لما كان المستأنف المذكور اسمه اعلاه قد قدم طلبا لمحكمة الاستئناف العليا بالقدس بالسماح له باستئناف القرار الصادر من محكمة الاستئناف العليا في القدس في القضية رقم ~~٣٨/٢٢٢~~ ١٩٤٠/٨٩ استئناف حقوق الصادر بتاريخ ~~١٩٣٨/١٠/١٠~~ ١٩٤٠/٥/٢٧ وقد منح له اذنا بالاستئناف الى مجلس الملك الخاص بتاريخ ~~٣٨/١١/٢٢~~ ١٩٤٠/٧/٥ وقد طلب منه تقديم كفالة بمبلغ ثلثماية جنيه فلسطيني .

لذلك فاننا نحن البنك ~~العربي~~ العثماني في ~~القدس~~ نابلس نتعهد بان ندفع الى المستأنف عليهم المذكورة اسماءهم اعلاه كافة الرسوم والمصاريف او بعضها التي يؤمر بدفعها المستأنف والتي تنشأ عن الاستئناف المذكور وكل عطل وضرر او خسارة تنشأ عن الاستئناف مما يحق قانونا للمستأنف عليهم ان يحصلوا عليه فيما اذا لم يحصل المستأنف على قرار يتضمن الاذن النهائي بالاستئناف او اذا رد الاستئناف لعدم ملاحقته او اذا امر جلالته في مجلسه الخاص بتضمين المستأنف المذكور ما تحمله المستأنف عليهم من مصاريف الاستئناف حسب المقتضى لغاية ثلاثماية جنيه فلسطيني .

واعتبارا مما تقدم نوقع اعلاه في هذا اليوم ~~١٥~~ ١٠ من شهر ~~كانون اول~~ آب سنة ~~١٩٣٨~~ ١٩٤٠ .

البنك العربي
شركة محدودة الاسهم
طابع ب ٣٣٠ مل
١٥ كانون اول سنة ١٩٣٨

شاهد وصرف
احمد

شاهد وصرف
عبد الرحيم الشريف

ختم كاتب العدل
القدس

P.T.O.

87/115

I Notary Public of Jerusalem do hereby certify and attest that on the day of the date hereof before me personally, appeared Mr. Abdel Hamid Eff. Shuman The General Manager of the Arab Bank Co. Ltd. who has been elected as such on 14/10/37 by a Special resolution (see Notarial document No. E/133 registered ~~xxxxxxxxxxxxxxxxxxxxxxxxxx~~ at this office on 23/12/37) A/ who was made known to me by the witnesses Musbah Eff. Kazimi and Abdel Rahim Eff. Sharif of Jerusalem and in my presence and in that of the above mentioned witnesses subscribed his name to this document and acknowledges same.

In witness whereof, I have hereunto set my hand and caused the seal of this office to be affixed hereto this fifteenth day of December, 1938.

NOTARY PUBLIC JERUSALEM.

Stamp (50) mils.

Sect. 10(3) lays down the general rule that the S. O. shall apply the land law in force at the date of the hearing of action:

Now, what does the land law at date of hearing ~~state~~ include?

It includes Ottoman land law as amended by subsequent Palestine legislation.

How does the Ottoman land law as amended at the date of hearing stand?

To establish a good title Possession must be adverse

1. L.A. 64/24 Rotenberg vol II P. 646
   More particularly P. 649

2. ~~Se~~ L.A. 135/26 Rotenberg vol V P 1729
   More particularly P 1732-1734
   quoting LA no 137/23 Rotenberg vol II P. 764

3. L.A. 121/26 Rotenberg ~~&~~ vol IV P. 1271
   More particularly P. 1275

4. C.A. no 4/39 Levanon vol V P. 79

5. L.S. ga no 18/32 Rotenberg vol II P. 675 — an equitable right cannot be established in contradiction to clearly expressed substantive law

6. ~~See also art 23 of the O. Land Code.~~

The interpretation I lay on sec. 10 of the Land Transfer Ord. is this:

The L.S.O. must apply the land law as is to be found in the Ottoman Law and the Palestine Legislation, but when it comes to rules of the Ottoman law or enactments issued by the British Military administrations which prohibit the courts from hearing actions based on unregistered documents and rules of evidence etc, then and only then he shall have regard to equitable as well as legal rights to land.

Therefore in matters of disposition of land, the L.S.O must apply the Palestine Legislation as it stands and he cannot resort to equitable and legal rights.

C. A. No 82/33 Rot. Vol. III p. 1108

at p. 1110 " ----- we hold, therefore, that the contract is to be so construed (i.e as an agreement for sale) and it follows that the contract is not invalidated by Sect. 11 of the Transfer of Land Ord. 1920.

L. A. No 51/26 Rot. Vol. IV p. 1491

Judgment of Mr. Justice Seton. -----

"I think that the Power of Attorney in this case is a disposition of immovable property within the meaning of the Land Transfer Ord. 1920, and that as such it is null and void by virtue of the provisions of Sect. 11 of the said Ordinance save that the Respondent is entitled to recover from the Appellant any money paid to the latter in respect of the transaction."

C. A. No 88/29 Rot. Vol. I p. 189

----- "so far as the sale is concerned, the agreement is clearly within the terms of Sect. 11 and is to that extent void."

Disposition of immovable property — null + void

C. A. № 105/28 Rot. Vol. I p. 393.

". . . . . the material part for the purpose of the appeal is that the document was an agreement to sell property, an agreement to which the written consent of the Government was not obtained. Now by virtue of Art. 11 of the Transfer of Land Ordinance, 1920, it is prescribed that every disposition - - - - - - - - Accordingly the agreement must be held to be null and void in that the consent of the Government was not obtained to it.

C. A. № 89/30 — 1 P. L. R. p. 575

C. A. № 24/30 Rot. Vol I p. 397

". . . . . This Court has recently held in the case of Yehoshua Hantin v Ali Qasem Abdel Kader in C. A. № 29/30 that a contract for sale of land is not a disposition within the meaning of Sect. 2 of the Transfer of Land Ordinance, 1920. Hence the contract of sale is not to be regarded as null, merely on the ground that it provides for delivery of possession before registration.

Before this Court, however, it has been argued that the provisions of the contract relating to possession in fact constitute a mortgage of the land, pending registration, by way of security for the purchase money paid in advance. If that view be correct, the transaction effected by those clauses is an unregistered disposition and is therefore null & void under the Transfer of Land Ordinance, 1920.

C. A. № 36/25 Rot. Vol. III p. 1092

The Court holds that it was within the competence of the District Court when hearing an action for recovery of money paid in respect of an agreement between the parties to decide whether such agreement was valid or not and that in view of Sect. 11 of the Transfer of Land Ordinance, 1920, the Court was right in declaring the agreement invalid

In the Privy Council

Opinion

1.

Appeal of:

Sheik Abdo

Civil Appeal No 224/38

This appeal was decided on two points namely

1. That although a Mughara agreement is a disposition within the meaning of the Land Transfer Ordinance sec. 11 (Cap. 81, p. 888) yet the Land Settlement Officer is to apply the Land Law in force at the hearing of the action and, at the same, he is directed to have regard to equitable as well as to legal rights

2. That this land was cultivated by the plaintiffs under conditions that would prima facie support a claim for a possessory title to the whole land in their favour, had they so claimed.

With regard to the first point that a Mughara agreement is a disposition within the meaning of the Land Transfer Ordinance and is therefore null and void there is ample authority, apart from sec. 2 of the Land Transfer Ordinance, which defines a "disposition",

(a) In Civil Appeal No. 90/32. Sheikh Muhamad Haj Abdallah v. Muhamad Abd Er-Rahim Murrih (Palestine Law Reports volume 1 P. 846 where the facts were similar to this case, the Supreme Court of Appeal held: that this was a disposition under Sec. 11 of the Land Transfer Ordinance and was therefore null and void but that the appellant could recover the money spent by him in planting the land.

(b) In Civil Appeal No 90/33 between the same parties (Rotenberg's Law Reports volume 5 page 1793), the same principle was applied.

(c) In C.A. 20/33. Ahmad Hussein Sedjorf and others v Muhamad ibn Khalil Shihab Ed-Din and others the same principle was applied. Copy of judgment attached hereunto. The principle that every disposition of land under sec 11 of the Land Transfer Ordinance has been established. This the established law in Palestine since 1920 and the judgment is now on appeal to Privy Council.

IN THE SUPREME COURT,
SITTING AS A COURT OF APPEAL,
JERUSALEM.

IN CIVIL APPEAL No. 89/40.

In the Matter of:-

1. Yousef Hassan Salah of Nablus through his curator
2. Mohammad Hassan Salah of Nablus
3. Adel Hassan Salah of Nablus
4. Omar Salah of Nablus

All of Nablus, represented by their general attorney Omar Salah of Nablus, address for service Henry Cattan, Advocate, Jerusalem. — APPELLANTS.

Vs.

1. Aref Abd al Qader ar Raziq
2. Jaser Aref Abd al Qader
3. Ahmad Aref Abd al Qader
4. Hassan Abd al Qader Abd al Raziq
5. Raya, widow of Abd al Hassan Abd al Qader, bint Massoud Abu Nahleh, on behalf of the estate of her deceased husband.
6. Salim Hamid Abd al Kader Abd al Razik
7. Farid Hamid
8. Asaad Jaber Omar
9. Ahmad Asad Jabr Omar
10. Mohammad Jaber Omar
11. Hassan Mohammad Salim
12. Abd er Rahim Hamad Ahmad ad Debis
13. Ibrahim Abd ar Rahim Ahmad
14. Abd ar Rashid Abd al Jaber
15. Ahmad Sulleiman Mohammad Abd al Jaber
16. Ahmad Sulleiman ad Debis
17. Mahmad Sulleiman ad Debis
18. Fatmeh bint Ahmed Ka'dan, widow of Mustafa Mohammad Salim, on behalf of the estate of her deceased husband
19. Dhiab Sulleiman Salim ad Debis
20. Nimr Sulleiman Salim ad Debis
21. Mohammad Ahmad al Kaadan
22. Husnein Hammad al Kaadan
23. Fatmeh Salman ad Debis, widow of Salim Mohd. Salim, on behalf of the estatees of her deceased husband
24. Mohammad Wakid
25. Yadibeh bint Mohd. al Muqbel, widow of Ahmad Abdallah al Muqbel, on behalf of the estate of her deceased husband
26. Mohammad Hussein Fadous
27. Hassan Mohammad Hussein
28. Hammad Hassan Jaber As Salim
29. Mohammad Abd al Jaber As Salim
30. Omar Ibrahim As Salim
31. Saleh Ibrahim As Salim
32. Abd al Karim Hamid Ahmad Ad Debis
33. Qablan Mahmoud Al Qaadan
34. Sabha Salih al Jaber
35. Abdallah Mustafa Mohammad Salim
36. Maurice Litwinsky
37. Emile Litwinsky
38. Raymond Litwinsky

Respondents No. 36,37,38 represented by Mr. Gointen, Advocate, Jerusalem.

— RESPONDENTS

All of Jayyous Village

courts of Palestine have ~~adopted it since then~~ applied it rigidly without exceptions: The following references may be given by way of example:

a) C.A. No 88/29. Jacob Behor v. The Anglo Palestine Co. Ltd. (Rotenbergs Law Reports vol 1 P. 188) ~~It was~~ held that: "So far as the sale is concerned, the agreement is clearly within the terms of sec 11, and is to that extent null and void."

b) C.A. No 51/26. Mohamad Saleh el Swaise v Salimah bint Sliman el Haddad (Rotenberg's Law Reports vol IV Page 1491) ~~It was~~ held that: "The Power of attorney in this case is a disposition ... within the meaning of the Land Transfer Ordinance 1920, and that as such it is null and void by virtue of the provisions of sec. 11 of the said ordinance, ~~and~~ that the respondent is entitled to recover from the appellant any money paid to the latter in respect of the transaction."

(c) C.A. 82/33. Michael Harris v Daniel Duncher (Rotenberg's Law Reports volume III Page 1108) ~~it was~~ held that "The ~~agreement~~ contract is an agreement for sale ... and is not invalidated by Sec 11 of the Land Transfer Ordinance."

(d) C.A 105/28. Isaac Gavrelowitz v. Ali Ibn Hassan Abu Dugrik, (Rotenberg's Law Reports volume I. P. 392) it was held that "The document was an agreement ... to which the ~~consent~~ written consent of the government was not obtained .... under Sec 11 of the Land Transfer Ordinance ... and therefore it was null and void - and therefore any attempt to recover money on promissory notes which emanate from an invalid agreement ... must be void."

IN THE SUPREME COURT,
SITTING AS A COURT OF APPEAL,
JERUSALEM.

IN CIVIL APPEALNNo. 89/40

APPLICATION FOR LEAVE TO APPEAL TO HIS MAJESTY IN COUNCIL.

The Petition of the Petitioners sheweth:-

1. That judgment against the petitioners was given by this Court in the above mentioned Appeal No. 89/40 on the 27th day of May, 1940, dismissing Appellants' Appeal against the judgment of the Land Court of Nablus given on 8.4.40, with costs.

2. That the matter in dispute on appeal exceeds £P.500,-

3. An affidavit sworn by one of the petitioners as to the value of the land in dispute is filed herewith.

4. The petitioners are desirous of appealing from the said judgment to His Majesty's Privy Coucil.

5. Copies of this application with annexures are herewith attached for service upon the Respondents for their notification of this application.

It is accordingly prayed that leave to appeal to his Majesty in Council may be granted by this court to the Petitioners subject to all conditions as to security or otherwise as the Court may see fit to impose.

It is further prayed that execution of the judgment appealed be stayed pending the determination of this appeal to His Majesty-in-Council.

COUSEL FOR PETITIONERS.

To:-

Take Notice that the petitioners have filed this day in this Court an application for leave to appeal to His Majesty-in-Council from the judgment of the Supreme Court of appeal in Civil Appeal No.89/40 delivered on the 27th day of May,1940 and that the grounds of the said application are as set out herein above.

And that the Court will be moved on the day of 1940 at o'clock in the morning or so soon thereafter as counsel can be heard by the above named Petitioners that the said application be granted and that the costs of this application be costs the cause.

Dated this day of June, 1940.

COUNSEL FOR PETITIONERS

e) C. A. No 24/30. Haj Khalil Mohamad Taha v Saleh Muhamad el ~~Sh~~ Shible (Rotenberg's Law Reports volume 1 P. 397.)

It was held that "If the provisions of the contract relating to possession in fact constitute a mortgage of the land pending registration ..... the transaction is an unregistered disposition and is therefore null and void under the Land Transfer Ordinance 1920."

f) C. A No 36/25; The Palestine Land Development Co Ltd. v. J. and I Salzman. (Rotenberg's Law Reports vol III P. 1092)

It was held that "In view of sec 11 of the Land Transfer Ordinance the District court was right in declaring the agreement invalid."

~~To continue with the fi~~

Having established that a disposition of land under sec ~~sec~~ 2 of the Land Transfer ordinance is null and void by sec 11 of the same ordinance ~~we continue~~ ~~to~~ let us proceed ~~with~~ to consider the first ~~second~~ point on which the appeal was decided, namely ~~the law to be applied by the land settlement officer~~ that the Settlement Officer ~~should~~ have applied the land law in force and should ~~have~~ had regard to equitable rights.

Sec 10 of the Land (Settlement ~~of~~ of Title) Ordinance, (Drafter Cap. 80, 1857) states that: "A settlement Officer shall apply the Land law in force at the date of the hearing of the action." According to Art. 46 of the Order-in-Council

The land law at the hearing of this action is the Ottoman ~~land~~ law as contained in the Ottoman Land Code and the law as contained in the Land Transfer Ordinance 1920 and the Ordinances amending same. This is the substantive law which ought to be applied by the Land settlement Officer. If such law is applied it follows that this appeal

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And that the Court will be moved on the day of 1940 at o'clock in the morning or so soon thereafter as Counsel can be heard by the above named Petitioners that the said application be granted and that the costs of this application be costs

Dated this day of June, 1940.

COUNSEL FOR PETITIONERS

should have been dismissed by virtue of sec 11 of the Land Transfer Ordinance and by virtue of the several cases above mentioned.

But there is the proviso to sec 10 of the ~~Land Transfer~~ Land Settlement Ordinance. Now what does that proviso mean, does it mean that the equitable and legal rights should override the provisions of the substantive law or does it apply only to rules of practice and procedure as contained in any rule of of the Ottoman law or made by the British Military Administration with regards to hearing actions based on unregistered documents or with regards to rules of evidence contained in the Ottoman Code of Civil Procedure or the Ottoman Civil Code.

~~*** For alternative . . . . . (see p. 7) of these notes,~~
~~The answer to this question is to be found in the~~
This question was considered and answered by ~~words of~~ Mr Justice Copland in ~~L.S~~ Land Settlement Appeal, Jaffa No 18/32, Government of Palestine v villagers of Sajad and others (Rotenberg's Law Report, volume II page 675) where he says "The doctrines of equity are foreign to the original jurisprudence of this country, but the Land Settlement Ordinances and the Land Courts Ordinances lay down definitely that the Land Settlement Courts and the Land Courts shall apply them and they cannot therefore be disregarded. It is perfectly true as the Settlement Officer states, that an equitable right cannot be established in contradiction to the clearly expressed provisions of substantive law, or, in other words that Equity cannot create a right that the law prohibits."

Although this case is one of the lower courts, it appears to give a correct interpretation of the proviso to sec. 10 of the Land Settlement Ordinance.

IN THE SUPREME COURT,
SITTING AS A COURT OF APPEAL,
JERUSALEM.

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And that the Court will be moved on the day of 1940 at o'clock in the morning or so soon thereafter as counsel can be heard by the above named Petitioners that the said application be granted and that the costs of this application be costs the cause.

Dated this day of July, 1940.

COUNSEL FOR PETITION-

~~Now if the second interpretation is given to this proviso and if equitable rights cannot override substantive law it follows that agreement of Mughenza is a disposition within the Land Transfer Ordinance and is null and void~~

2. To come to the second point on which this appeal was decided namely that the claim of the plaintiffs would support a claim for a possessory title — they favour had they so claimed.

~~Is that this true?~~ Is it so?

a) In the first place there was no claim ~~before~~ for a possessory title ~~and therefore~~ before the court and therefore this ground could not be entertained by the court. Moreover, it was not the subject of any argument. ~~as the appellants were plaintiffs before the Land settlement Officer they could not base their claim on possession~~

~~b) In order that a claim for~~

(b) ~~(c)~~ In order to succeed on a claim for a possessory title, the possession of the claimant must be adverse. ~~otherwise the claim cannot be sustained.~~

This ~~principle~~ is supported by the following ~~cases~~.

1. Article 23 of the ~~law~~ Ottoman Land Code.
2. E.S. Jaffa No 18/32; Government of Palestine v villagers of Sajad and others (Rotenberg's Law Report vol II P. 672, referred to herein above.
3. Land Appeal 64/24; Mary Eugenie Henriette Estrangin v Tayyans (Rotenbergs Law Report vol II P 649 where Mr Justice Jarallah said, "Similarly the lessee of a property by virtue of a contract

IN THE SUPREME COURT,
SITTING AS A COURT OF APPEAL,
JERUSALEM.

IN CIVIL APPEAL No. 89/40

APPLICATION FOR LEAVE TO APPEAL TO HIS MAJESTY IN COUNCIL.

The Petition of the Petitioners sheweth:-

1. That judgment against the petitioners was given by this Court in the above mentioned Appeal No. 89/40 on the 27th day of May, 1940, dismissing Appellants' Appeal against the judgment of the Land Court of Nablus given on 8.4.40, with costs.

2. That the matter in dispute on appeal exceeds £.500.-

3. An affidavit sworn by one of the petitioners as to the value of the land in dispute is filed herewith.

4. The petitioners are desirous of appealing from the said judgment to His Majesty's Privy Council.

5. Copies of this application with annexures are herewith attached for service upon the Respondents for their notification of this application.

It is accordingly prayed that leave to appeal to his Majesty in Council may be granted by this court to the Petitioners subject to all conditions as to security or otherwise as the Court may see fit to impose.

It is further prayed that execution of the judgment appealed be stayed pending the determination of this appeal to His Majesty-in-Council.

COUNSEL FOR PETITIONERS.

To:-

Take Notice that the petitioners have filed this day in this Court an application for leave to appeal to His Majesty-in-Council from the judgment of the Supreme Court of appeal in Civil Appeal No. 89/40 delivered on the 27th day of May, 1940 and that the grounds of the said application are as set out herein above.

And that the Court will be moved on the day of 1940 at o'clock in the morning or so soon thereafter as counsel can be heard by the above named Petitioners that the said application be granted and that the costs of this application be costs the cause.

Dated this day of June, 1940.

COUNSEL FOR PETITIONERS

of lease, is not entitled to set up a plea of prescription against his landlord unless he holds the property as an owner. So is the position as between depositor and depositary, lender and ~~bor~~ borrower."

4. E.A. 135/26 Abdallah Abd El Hafez and another v. Abdel Kader Khalil Salman. (Rotenberg's Law Reports volume V P. 1729, where it ~~was held~~ the learned Senior Puisne Judge said, "Having regard to the terms of Article 20 of the Land Code it would, in my opinion be inconsistent to hold that a ten years' ~~occupation~~ occupier could obtain a title against a registered owner. Article 20 prevents the registered owner from enforcing his right by action after ten years' adverse possession. But while it bars his remedy it does not destroy his right and so long as he has a right to the land even though he cannot enforce by action it would be inconsistent to hold that the occupier had also acquired a right which was capable of registration."

5. E.A. No 121/26. Mahmud Ahmad Salameh & others v. Saleh Ibrahim Ismail. (Palestine Law Reports vol I P 234) Corre J. said "It is true that the principle that possession by one heir is possession by all heirs does not apply to co-owners whose title arises otherwise than by inheritance from a common ancestor. It follows that one co-owner (who is not a co-heir) can set up adverse possession as a defence to a claim by another co-owner based on their common title.

IN THE SUPREME COURT,
SITTING AS A COURT OF APPEAL,
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IN CIVIL APPEALNNo. 89/40

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COUNSEL FOR PETITI
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But in order that such defence may be sustained the possession by the defendant must clearly be adverse to the title by co-ownership. Mere cultivation of the land, which might have been cultivation as a co-owner, is not sufficient to cause time to run in favour of the defendant. Time will only run in his favour from the date of some act which implies a clear denial of the title of ~~co~~ co-ownership.

6. C. A. No 4/39. Nahum Wilbush vs another v Russian Ecclesiastical Mission (Levanon Law Reports vol v p. 79) Judgment by Manning J. " Before the settlement Officer, the present Respondent succeeded on the ground that they had been in possession of the disputed land ~~so~~ without interruption for the period of Prescription .... The Settlement Officer did not consider it necessary to hear any evidence from the respondent and it is possible that he might have meant that on the evidence before him he was satisfied as to the Respondents claim to adverse possession, but he has not said ~~so~~ this, and we do not feel justified in assuming that he meant to say it ...." The appeal was allowed.

~~xxx For alternative interpretation of this proviso, it is suggested that applies to transactions which took place before the enactment of this ordinance in order to protect the interests of bona fide persons who had already entered into such transactions.~~

IN THE SUPREME COURT,
SITTING AS A COURT OF APPEAL,
JERUSALEM.

IN CIVIL APPEALNNo. 89/40

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Dated this day of June, 1940.

COUNSEL FOR PETITIONERS

IN THE SUPREME COURT,

SITTING AS A COURT OF APPEAL.

IN CIVIL APPEAL No.89/42.

In the matter of :-

1. Yousef Hassan Salah of Nablus through his curator
2. Muhammad Hassan Salah of Nablus
3. Adel Hassan Salah of Nablus
4. Omar Salah of Nablus

} APPELLANTS.

All of Nablus, represented by their general attorney Omar Salah of Nablus, address for service Henry Cattan, advocate, Jerusalem.

vs.

1. Aref Abd al Qader Ar Raziq
2. Jaser Aref Abd al Qader
3. Ahmad Aref Abd al Qader
4. Hassan Abd al Qader Abd al Raziq
5. Raya, widow of Abd al Hassan Abd al Qader, bint Massoud Abu Nahleh, on behalf of the estate of her deceased husband.
6. Salim Hamid Abd al Kader Abd al Razik
7. Farid Hamid
8. Assad Jaber Omar
9. Ahmad Asa Jabr Umar
10. Muhammad Jaber Umar
11. Hassan Muhammad Salim
12. Abd er Rahim Hamad Ahmad ad Debis
13. Ibrahim Abd ar Rahim Ahmad
14. Abd ar Rashid Abd al Jaber
15. Ahmad Sulleiman Mohd Abd al Jaber
16. Ahmad Sulleiman ad Debis
17. Mahmud Sulleiman ad Debis
18. Fatmeh bint Ahmed Ka'dan, widow of Mustafa Mohd. Salim, on behalf of the estate of her deceased husband
19. Dhiab Sulleiman Salim ad Debis
20. Nimr Sulleiman Salim ad Debis
21. Muhammad Ahmad al Kandan
22. Husein Hamad al Kandan
23. Fatmeh Salman ad Debis, widow of Salim Mohd. Salim, on behalf of the estate of her deceased husband
24. Mohammad Wahid
25. Yadibeh bint Mohd. al Muqbel, widow of Ahmad Abdallah al Muqbel, on behalf of the estate of her deceased husband
26. Mohammad Hussein Padous
27. Hassan Mohammad Hussein
28. Hamad Hassan Jaber as Salim
29. Mohammad Abd al Jaber as Salim
30. Omar Ibrahim As Salim
31. Saleh Ibrahim as Salim
32. Abd al Karim Hamad Ahmad ad Debis
33. Qablan Mahmoud ad Qaadan
34. Sahha Salih al Jaber
35. Abdallah Mustafa Muhammad Salim

IN THE SUPREME COURT,

SITTING AS A COURT OF APPEAL.

IN CIVIL APPEAL No.39/40

In the matter of :-

1. Yousef Hassan Salah of Nablus through his curator
2. Muhammad Hassan Salah of Nablus
3. Adel Hassan Salah of Nablus
4. Omar Salah of Nablus

} APPELLANTS.

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5. Raya, widow of Abd al Hassan Abd al Qader, bint Massoud Abu Nahleh, on behalf of the estate of her deceased husband.
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IN THE SUPREME COURT,

SITTING AS A COURT OF APPEAL.

IN CIVIL APPEAL No.89/40

In the matter of :-

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3. Adel Hassan Salah of Nablus
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IN THE SUPREME COURT,

SITTING AS A COURT OF APPEAL.

IN CIVIL APPEAL No.89/40

In the matter of :-

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IN THE PRIVY COUNCIL.

No. of 1940.

ON APPEAL FROM THE SUPREME COURT OF APPEAL OF JERUSALEM, PALESTINE.

BETWEEN:-

1. Mustafa Ahmad Mohammad Abdulnabi, through his attorney Hamed Mustafa Ahmad Abdul Nabi

2. Dasouki Abdul Kader Mohd. Abdulnabi.
3. Abdulkader Abduljawad Abdulkader Abdulnabi.
4. Salma Abduljawad Abdulkader Abdulnabi.
5. Ammeh Abduljawad Abdulkader Abdulnabi.
6. Khadijeh Ali Khalil Ali Abdallah.
7. Shehadeh Mahmoud Abdulnabi, on behalf of the estate of Mohammad Ahmed Mohd. Abdulnabi.
8. Mohammad Hussein Issa El Mimeh.
9. Mahmoud Abdulrahim Issa El Mimeh.
10. Mohammad Abdulrahim Issa El Mimeh.

PLAINTIFFS
APPELLANTS

and

Ibrahim Adham Hassan Hussein Abu El Huda in his capacity as Mutawali Wakf Sheikh Abu El Huda.

DEFENDANT
RESPONDENT

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

No.	Description of Document.	Date.
	IN THE LAND SETTLEMENT OFFICER'S COURT.	
1.	Memorandum of claim No. 269 submitted by Appellants (Plaintiffs) No. 2,3,4,5and 6 in Case No.14/Ramle	26/6/31
2.	M	

IN THE PRIVY COUNCIL.

No. of 1940.

ON APPEAL FROM THE SUPREME COURT OF APPEAL OF JERUSALEM, PALESTINE.

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IN THE SUPREME COURT,

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IN CIVIL APPEAL No.89/40

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IN THE SUPREME COURT,

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IN CIVIL APPEAL No.89/40

In the matter of :-

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34. Sahha Salih al Jaber
35. Abdallah Mustafa Muhammad Salim

نابلس في ١٢/٨/٣٩

حضرة الاستاذ الكبير

تحية وسلاماً وبعد فانني استميحك عذراً لتأخر سيدي الوالد في اجابة طلبكم وذلك لاسباب قاهرة حالت دون ذلك، ولكنني في هذه الاونة اؤكد لحضرتكم انه سيوافيكم عاجلاً غب تقضاء بعض الشؤون الضرورية لانجاز ما يجب ولشخصك الكريم جزيل الشكر وعاطر الثناء.

الخلص

نجل الشيخ محمد صبلا

P. C. L. A. 12/38.

In the Matter of:-

Sheikh Mohamad Salah. APPLICANT.

and.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh, all of Et-Tira village, Tulkarm Sub-District. RESPONDENTS

List of Documents to Constitute The Record of Appeal to His Majesty in Council in the Above Mentioned Case.

Document	Date.
1. Decision of Land Settlement Officer	15.11.37
2. Application to the Land Settlement Officer for Leave to Appeal to Land Court.	
3. Order of Land Settlement Officer refusing to grant leave to Appeal to Land Court.	
4. Application to President of Land Court of Nablus for leave to appeal to Land Court.	23.12.37
5. Supplement for leave to appeal to Land Court.	1.1.38
6. Order of President of Land Court, Nablus granting leave to appeal to Land Court.	29.3.38
7. Statement of Appeal to Land Court.	4.4.38
8. Statement of Reply in Land Court, Nablus.	23.4.38
9. Judgment of the Land Court, Nablus.	30.6.38
10. Decree of the Land Court, Nablus.	21.7.38
11. Exhibits produced in the Land Court, Nablus by Appellant. (a) Land Appeal No.20/33.	
12. Statement of Appeal to Suprme Court.	1.8.38
13. Cross appeal on behalf of Respondent.	2.10.38
14. Rejoinder on behalf of Respondent.	2.10.38
15. Record of Proceedings in the Supreme Court.	10.10.38
16. Judgment of the Supreme Court dismissing the Appeal.	10.10.38
17. Decree of the Supreme Dismissing the Appeal.	24.10.38
18. Application to the Supreme Court for leave to appeal to His Majesty in Council.	4.11.38
19. Record of Proceedings in the Supreme Court.	22.11.38
20. Order of the Supreme Court granting Provisional leave to appeal.	22.11.38

P.C.L.A 134/37

IN THE MATTER OF:

1. Amneh Mustafa Luswi.
2. Muhammad Khalil Shehab Eddin.
3. Abdul Raouf Khalil Shehab Eddin.
4. As'ad Khalil Shehab Eddin.
5. Aysheh Khalil Shehab Eddin.
6. Safieh Khalil Shehab Eddin.

APPLICANTS.

v.

1. Muhammad Rasmi El Jurf, on behalf of the heirs of his father.
2. Miriam Mustafa El Jurf, on her own behalf and as guardian of her son, Mustafa Ayyoub Yassin, and on behalf of the other heirs of her husband Ayyoub.
3. Shafiqa Ali Juha, on her own behalf and as guardian of her son, Sabri Darwish el Jurf, and on behalf of the other heirs of her late husband, Darwish el Jurf.
4. Ahmad Hussein El Jurf, on behalf of the heirs of his father.
5. Abdul Aziz Abbas Mahmoud Farawi, on behalf of the heirs of his father.

RESPONDENTS.

LIST OF DOCUMENTS TO CONSTITUTE THE RECORD OF APPEAL TO HIS MAJESTY IN COUNCIL IN THE A/M CASE.

Document.		date.
1.	The Plaintiff's original statement of claim in the District Court of Jaffa.	24.5.35
2.	Defendants 1st. reply to Plaintiff's statement of calim.	24.8.35
3.	Plaintiff's rejoinder to above mentioned reply of defendants	11.1.36
4.	Defendants' Further Statement of Reply	19.1.36
5.	Plaintiff's Rejoinder to Defendant's Further statement of Reply	4.2.36
6.	Third Party's claim in the District Court of Jaffa	8.2.36
7.	Plaintiff's Further Rejoinder	17.3.36
8.	Defendant's Reply to Plaintiff's Rejoinder of 17.3.36	20.3.36
9.	Record of Proceedings in the District Court, Jaffa (hearing of 16.3.36) in English (notes taken by His Honour the President of the Court)	16.3.36

10. Translation of the record of Proceedings (taken in Arabic by Court's clerk) 16.3.36

11. Judgment of the District Court of Jaffa (Case Civil No.) dated 2.10.36. delivered 2.10.36 2.10.36

1 A.(I) Exhibits produced by Plaintiffs.

a) Agreement dated 6 Nissan 1328 on which Plaintiff's rests.

b) Notarial Notice date 11.3.28. sent by Advocate Suleiman Abu Ghazaleh to Muhammad Khalil Shehab Eddin through the Notary Public of Jaffa.

c) Notarial Notice as above (b) dated 11.8.26

d) Letter from Banco Di Roma, Jaffa bearing date 21.5.35 regarding rate of exchange of 1000 Napoleons.

e) Copy of Court of Appellant's judgment dated 16.6.34 in Land Appeal No. 6/34.

f) Copy of the Jaffa Land Court dated 30.11.30 (on appeal.)

(II) Exhibits Produced by Defendants.

Lnad Registry Extracts (five in Number.) relating to land in question.

12. Appellants' (Defendants in the District Court) Notice and grounds of appeal to the Supreme Court, Jerusalem. 24.11.36

13. Respondents' Reply in the Supreme Court to Appellant's Notice and Grounds of Appeal. 19. 1. 37.

14. Notes of the Proceedings in the Supreme Court of the hearing of the case (taken in English by His Honour the Chief Justice.) 24.5.37

15. Judgment of the Supreme Court (Civil Appeal No. 8/37.) dismissing Appeal. 24.5.37

16.	Application of Appellants to Supreme Court for review of the Judgment delivered on 24.5.37	15.5.37
17.	Reply of Respondents to Application for Review.	12.8.37
18.	Appellants' rejoinder to Respondents' Reply of 12.8.37	6.10.37
19.	Record of Proceedings before the Supreme Court of the hearing of 3.11.37 (regarding the Review.)	3.11.37.
20.	Judgment of the Supreme Court Jerusalem in Civil Appeal 134/37 rejecting said application for Review.	25.11.37
21.	Application of Appellants for Leave to Appeal to His Majesty in Council.	12.12.37.
22.	Order of the Supreme Court granting conditional Leave to Appeal	16.3.37.

Exhibit in the Supreme Court.

Document produced by Appellants:

a)	Affidavit by the Chief Clerk of the District Court of Jaffa (Salameh Eff. Abu Loghod.)	3.6.37
b)	Receipt for fees in respect of service of copy of judgment of the District Court Jaffa	24.11.36
c)	Photostatic copies of the "Evidence of Service" of the Judgment of the District Court Jaffa, for the purpose of appeal.	
23.	Order of the Supreme Court granting final leave.	
24.	Bond to secure Respondents' costs given by the Arab Bank Jaffa.	8.6.38

APPELLANTS.

In the Supreme Court Sitting As A Court of Appeal

In the Appeal of:

Civil Appeal 224/38.

1. Hussein Abdul Rahman Yacoub,
2. Abdul Kader Ex Zabn Ahmad Kassem,
3. Khalil Hammad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh. (APPELLANTS) (RESPONDENTS)

v.

Sheikh Mohammad Salah. (RESPONDENT) (APPELLANT)

Appeal and Cross-Appeal from the judgment of the District Court of Nablus (Appellate Capacity) dated the 30th of June, 1938.

DECREE.

This appeal coming on for hearing this tneth day of October 1938, before Their Honours: Mr. Justice Copland, Mr. Justice Khayat, and Mr. Justice Abdul Hadi; andx upon hearing the appellants in person and without calling on them to reply to the cross-appeal; and upon hearing Walid Eff. Salah, Advocate for Respondent, in reply and on the cross-appeal; it is ordered that the appeal be allowed, the judgment of the LandCourt be set aside, and the judgment of the Settlement Officer be restored, and it is further ordered that the cross-appeal be dismissed.

And it is ordered that the Respondent do pay to the appellants the costs of the Appeal and cross-appeal together with LP.4.- travelling expences.

Given under the Seal of this Court this tenth day of October 1938.

By the Court

Sgd. Chief Registrar.

ISSUED 24.X.38.

Affidavit

I, the undersigned, Sheikh Moh.[med] Salah, resident at Nablus, make oath & declare as follows:

1. That ~~the~~ Supreme Court of Appeal on 10.10.38, in Civil Appeal 224/38, set aside the judgment of the Land Court in Land ~~Ap~~ Appeal 17/38 confirming the judgment of the Settlement Officer of Tulkarem dated 15/11/37 in cases Nos. 173, 316, 317 and 319 lodged by Hussein Abdul Rahman ~~Jacob~~ Ya'acoub Kassem, Abdul Kader el zein Ahmad and Khalil Hamad Mohammad Kassem, and Mosleh Khalil Ahmad Abu Alkfeh, of El Zire Village in Block 7733 parcel 11 and in Block 7776 parcels 24, 25 and 26.

2. That the lands in dispute and which form the subject matter of the case stated in the first paragraph of this Affidavit are of area of about 150 new dunums and that the value of each dunum is not less than ~~Rs.~~ £P. 10.

3. That the value of the shares adjudged for the abovementioned plaintiffs in paragraph 1. of this Affidavit is £500.

In witness thereof I have affixed my

signature and made oath.

Dated this 13th October, 1938

signed.

Sworn before me (signed) Magistrate Jerusalem.

IN THE LAND COURT OF NABLUS (APPELLATE CAPACITY)

Settlement Appeal No. 17/38.

BETWEEN:

Shiekh Muhammad Salah, of Nablus. APPELLANT.

and

1. Shiekh Abdul Rahman Yacoub Kassem.
2. Abdul Kader Es-Zein Ahmad.
3. Khalil Hamad Muhammad Kassem.
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

D e c r e e

This cause coming on for hearing this 30th day of June, 1938, before His Honour Judge W. Clive Curry, A/President Land Court Nablus, and His Honour Judge Muhammad Eff. Baradey, Judge Land Court Nablus, and upon reading the notice of appeal filed by Shiekh Muhammad Salah and the reply filed by the respondents;

IT IS THIS DAY ADJUDGED that the decision of the Land Settlement Officer dated 15.11.37 in cases Nos. 173, 316, 317, and 319/Tireh be and is hereby set aside and the case remitted to him to determine the compensation (Including money and compensation for labour) payable by the appellant to the respondents in respect of their cultivation of the property in dispute and that such compensation be charged on the land and that the costs of this action do follow the event.

GIVEN under the seal of this Court this 30th day of June, 1938, and delivered in open Court in presence of both parties this 21st day of July, 1938.

By the Court

D. S. Yousef

for REGISTRAR.

GOVERNMENT OF PALESTINE.

Land Settlement Officer,
Tulkarm Settlement Area,
P.O.Box 12.

Case No.173/Tira.

Tulkarm,16th December 1937.

Application for leave to appeal from my decision in cases 173,316,317,319/Tira by Muhammad Hasan Salah.

Paragraphs numbered as in application.

2. This is a statement of claim, and is not appealable.

3. The question of prescriptive rights did not arise, and the proposed argument is irrelevant to the case.

4. See statement of applicant's wakil at bottom of page 5 and top of page 6 of proceedings; where he states that all the plaintiffs have similar cases. Each case was taken separately and each plaintiff examined. Witnesses were in common. All applicant's witnesses were called and examined.

5. This is discussed in my decision.

6. See 5.

7. Applicant appointed his son as wakil, and made no application to be heard as a witness.

8. Applicant himself is equally guilty with plaintiffs in this matter. Under part B. 5 of his claim he states "I do not know whether this parcel is registered or not, or in whose name". This point is also dealt with in my decision.

Leave to appeal is refused on all points.

SETTLEMENT OFFICER,
TULKARM SETTLEMENT AREA.

TRANSLATION.
AFFIDAVIT.

I, the undersigned Sheikh Mohamad Salah of Nablus make oath and say as follows:-

1. The Supreme Court of appeal in its order dated 10.10.38 in Civil Appeal No.224/38 has upset the judgment of the Land Court in itsappellate capacity in Land Case No. 17/38 and restored the Decision of Land Settlement Officer of Tulkar, dated 15.11.37 in cases Nos. 173,316,317, and 319 instituted against me by Hussein Abdul Rahman Yacoub Kassem, Abdul Kader Ez-zabn Ahmad, Khalil Hamad Mohamad and Musleh Khalil Ahmad Akfeh all of Et-Tira village, Tulkarm Sub-District, in Block 7733, Parcel 11 and Block 7776 parcels 24, 25 and 26.

2. The Lands in dispute which are the subject matter of the case mentioned in para 1 hereof is habout 150 dunoms in area, and the value of each dunom is not less than P.m10.

3. The value of the shares adjudged to be registered in the names of the plaintiffs mentioned in para 1 hereof exceed P.500.

In witness whereof I have hereunto affixed my signature after taking the oath.

This 30th day of October 1938.

Sgd. Mohammad Salah.

The above named deponent Sheikh Mohamad Salah appeared before me, took the oath and signed this affidavit in my presence this day of 1938,

Magistrate.

Jerusalem.

Jerusalem 6th Jan.1939.

In the Supreme Court,
Sitting as aCourt of Appeal,
J e r u s a l e m .

P. C. L. A. No.12 of 1938.

Sheikh Mohammad Salah. APPELLANT.

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS

In accordance with order of this Honourable Court dated the 22nd day of November, 1938, the Appellant prays hereby to file a bank guarantee in the sum of £.300.- from the Arab Bank in Jerusalem dated the 15th day of December, 1938, for the due prosecution of this appeal and the payment of all such costs, as may become payable to the Respondent in the event of the appellants not obtaining an order grnating him final leave to appeal or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellant to pay the Respondents' costs of the appeal (as the case may be).

The appellant files herewith also four copies of the said guarantee for service on the respondents.

COUNSEL FOR THE APPELLANT.

P.C.L.A. No.12/38
(Civil Appeal No.224/38)

In the Supreme Court Sitting as a Court of Appeal.

BEFORE:- The Senior Puisne Judge, Mr. Justice Copland and Mr. Justice Khayat.

IN THE APPLICATION OF:-

Sheikh Mohammad Salah. APPLICANT.

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

Application for leave to appeal to His Majesty in Council from the judgment of the Supreme Court in Civil Appeal 224/38 dated the 10th October, 1938.

FOR APPLICANT : Mr. Cattan and Mr. Germanus.

FOR RESPONDENTS: In person except No.4. No appearance served.

O R D E R .

Whereas by Article 5 of the Palestine (Appeal to Privy Council) Order-in-Council, application to this Court for leave to appeal has to be made by motion or petition within thirty days from the date of judgment to be appealed from the applicants giving the opposite party notice of their intended application; and

Whereas application to this Court has been made in time by petition, with notice to the other side, on the fifth day of November, 1938; and

Whereas under Article 3(a) of the said Order, an appeal shall lie as of right, from any final judgment of the Court, where the matter in dispute on the appeal amounts to or is of the value of £.500 sterling or upwards, or where the appeal involves directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and

Whereas the matter in dispute on the appeal is more than £.500 sterling;

The Court therefore orders and it is hereby ordered that

leave to appeal be granted subject to the following conditions:

(i) That the Appellants do enter, within two months, of the date of this Orderinto a bank guarantee in the sum of £.300 for the due prosecution of the appeal and the payment of all such costs, as may became payable to the Respondents in the event of the Appellants not obtaining an Order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellants to pay the Respondent's costs of the appeal (as the case may be);

(ii) That the Appellants do take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within six months of the date of this Order;

(iii) That the execution as regards the registration of lands in the names of Respondents be stayed, but as regards the Costs the Respondents may apply for execution provided they enter into a security in the amount of costs executed.

Given and delivered this 22nd day of November, 1938.

TRANSLATION.

Security for costs of Appeal to His Majesty in Council

In the Supreme Court
Sitting as a Court of Appeal,
J e r u s a l e m .

Case No. Privy Council Appeal 12/38.

Sheikh Mohammad Salah. APPELLANT

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

Whereas the above named appellant has applied to the Supreme Court of Appeal, Jerusalem for leave to appeal to his Majesty in Council from the judgment of the Supreme Court of Appeal, Jerusalem in Civil appeal No.224/38 delivered on 10.10.38, and he was granted leave on 22.11.38 to appeal to his Majesty in Council and was ordered to file a guarantee in the amount of £.300.

Now, we therefore, the Arab Bank at Jerusalem do hereby promise that we will pay to the above named respondents all and any costs that the appellant may be ordered to pay to them in respect of the said appeal together with any damages or loss caused by the appeal which the respondents may be legally entitled to recover in the event of the appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the Respondents' costs of the Appeal (as the case may be), to the amount of £.300.

In witness whereof we have hereunto affixed our signatures this 15th day of December, 1938.

(Sgd) Abdul Hamid Shuman.

Seal of the Arab Bank Co. Ltd.

witness witness

Musbah El Kazimi Abdul Rahim Al Sharif.

Privy Council Leave Application
No.12/38.

Civil Appeal No. 224/38.

22.11.38.

In the Supreme Court Sitting as a Court of Appeal.

Before:- The Senior Puisne Judge, Mr. Justice Copland and Mr. Justice Khayat.

In the Application of:-

Sheikh Mohammad Salah. APPLICANT.

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Es Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh, all of Et-Tira village, Tulkarm Sub-District. RESPONDENTS.

Application for leave to appeal to His Majesty in Council from the judgment of the Supreme Court in Civil Appeal No.224/38, dated the 10th of October 1938.

For Applicant: Mr. Cattan and Mr. Germanus.

For Respondents In person except No.4 (served).

Cattan: Leave to appeal to P.C. affidavit re value 75 dunums involved.

Abdul Kader: On behalf of the Respondents:

Value is £.20 per dunum.

Order Leave granted on conditions.

1. Appellant to give bank guarantee of £.300 within 2 months for due prosecution etc.

2. Necessary steps for despatch of record within 6 months.

3. Stay of execution as regards registration of Land in names of respondents but not as regards costs.

Respondents to enter into security for latter.

(Sgd) R.J. Manning.

R. Copland.

F. Khayat.

١٦/٢/١٩٣٩

حضرة الفاضل الشيخ محمد افندي صلاح المحترم

تحية واحتراما

كتبت لكم منذ مدة اسبوعين تقريبا لاخبركم بان كافة الاوراق اللازمة لاستئناف دعواكم لمجلس الملك الخاص اصبحت جاهزة ما عدا اوراق مأمور التسوية والان افيدكم ان الدوسيه بكاملها جاهزة للتقديم بما في ذلك اوراق مأمور التسوية ويجب تقديم هذه باسرع ما يمكن حتى ترسل لبلاد الانكليز للطبع فعليه ارجو ان تبادروا حالا بتقديم كفالة البنك التي طلبناها منكم بخصوص المصاريف في بلاد الانكليز وان ترسلوا بها مبلغ (١٥٠) جنيها .

وتفضلوا بقبول فائق الاحترام

١٩٣٩/٦/٥

حضرة الفاضل الشيخ محمد افندى صلاح المحـــترم

تحية واحتراما

كتبت لحضرتكم مؤخرا بخصوص دعواكم لمجلس الملك الخاص انه بتاريخ ٣٩/٥/٢٢ استحصلنا على الامر النهائي بالاستئناف لمجلس الملك الخاص وطلبت منكم ارسال مبلغ ١٥٠ جنيها وتأمين باقي المصاريف بطريقة مناسبة ولكن للان لم استلم جوابا منكم مع ان المسألة مستعجلة جدا لان المدة المعطاة لنا تنتهي قريبا ولا يمكني تحمل اى مسؤولية بسبب تأخركم وعليه اعود فاحرر هذا لحضرتكم مرسلا اياه بالبريد المسجل لرفـــع اى مسؤولية قد تنتج عن رد الاستئناف بسبب تأخركم .

وتفضلوا بقبول فائق الاحترام

(24) 23. Evidence of Defendant ~~continued~~ attorney continued 6/11/3

(24) 24. Evidence of Plaintiff in case 317
recalled by Land settlement Officer 6/11/37

(24) 25. Evidence of attorney of Defendant
continued 6/11/37

(25) 26. Evidence of Plaintiff in case 319 6/11/37
recalled by Land Settlement Officer

(25) 27. Evidence of attorney of defendant
~~continued~~ in case 316 continued 6/11/37

(25) 28 Evidence of Plaintiff in case 316 6/11/37

(25) 29 Evidence of Ibrahim Nasr-Allah
recalled by Land Settlement Officer 6/11/37

(26) 30 ~~29~~ Evidence of Yonsef Mahmoud
Mansour recalled by Land
Settlement Officer 6/11/37

(26) 31 ~~30~~ Evidence of Hassan Kharawi 6/11/37

(30) 32 decision
15/11/37

P. C. L. A. 12/39.

In the Matter of:-

Sheikh Mohamad Salah. APPLICANT.

and.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh, all of Et-Tira village, Tulkarm Sub-District. RESPONDENTS

List of Documents to Constitute The Record of Appeal to His Majesty in Council in the Above Mentioned Case.

Document	Date.
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2. ~~1.~~ Decision of Land Settlement Officer	15.11.37 ✓
~~2. Application to the Land Settlement Officer for leave to Appeal to Land Court.~~	
~~3. Order of Land Settlement Officer refusing to grant leave to Appeal to Land Court.~~	~~29.3.38~~
3. ~~4.~~ Application to President of Land Court of Nablus for leave to appeal to Land Court.	23.12.37
4. ~~5.~~ Supplement to Application for leave to appeal to Land Court.	1.1.38
5. ~~6.~~ Order of President of Land Court, Nablus granting leave to appeal to Land Court.	29.3.38
6. ~~7.~~ Statement of Appeal to Land Court, Nablus	4.4.38
7. ~~8.~~ Statement of Reply in Land Court, Nablus.	23.4.38
8. ~~9.~~ Judgment of the Land Court, Nablus.	30.6.38
~~10. Decree of the Land Court, Nablus.~~	~~21.7.38~~
9. ~~11.~~ Exhibits produced in the Land Court, Nablus by Appellant: Land Appeal No.20/38.	
10. ~~12.~~ Statement of Appeal to Supreme Court.	1.8.38
11. ~~13.~~ Cross appeal on behalf of Respondent.	2.10.38
12. ~~14.~~ Rejoinder on behalf of Respondent.	2.10.38
13. ~~15.~~ Record of Proceedings in the Supreme Court.	10.10.38
14. ~~16.~~ Judgment of the Supreme Court ~~dismissing~~ allowing the Appeal in Civil Appeal 274/38. (To be typed.)	10.10.38 ✓
~~17. Decree of the Supreme Dismissing the Appeal.~~	~~26.10.38~~
15. ~~18.~~ Application to the Supreme Court for leave to appeal to His Majesty in Council.	4.11.38 ✓
~~19. Record of Proceedings in the Supreme Court.~~	~~22.11.38~~
16. ~~20.~~ Order of the Supreme Court granting Provisional leave to appeal.	22.11.38 ✓
~~17. Affidavit of Salah 13.10.38. ✓ (to be typed)~~	

IN THE SUPREME COURT SITTING AS A COURT OF APPEAL.

1. Hussein Abdul Rahman Yacoub,
2. Abdul Kader Es-Zein Ahmed Kassem,
3. Khalil Hamad Muhammad Kassem,
4. Mhaleh Khalil Ahmed Akfeh. APPELLANTS

v.

Shieldh Muhammad Salah. RESPONDENT

Civil Appeal 224/38.

JUDGMENT.

This appeal depends on the value, if any, to be given to an alleged Mugharasah agreement entered into between the parties. We are agreed that there was evidence to support the findings of fact made by the Settlement Officer that there was a Mugharasah agreement which was in force for a period of about fifteen years. It is true that a Mugharasah agreement is a disposition within the meaning of the Land Transfer Ordinance, but that does not altogether dispose of the question because by Section 10 of the Land (Settlement of Title) Ordinance, a land Settlement Officer is to apply the Land Law in force at the date of the hearing of the action and, at the same time, he is directed to have regard to equitable as well as to legal rights.

Now it is true, as I have said, that Mugharasah agreement is void in law, but in our opinion, it will none the less support an equitable title to the land as between the present parties and we therefore think that the Land Court went arong in their appeal Judgment. As the Settlement Officer remarked, this land was cultivated by the plaintiffs (Appellants here) under conditions that would prima facie support a claim for a possessory title to the whole land in their favour, shad they so claimed.

That being so, the appeal must be allowed, the judgment of the Settlement Officer restored. The Appellants will have their costs together with LP.4.- travelling expenses.

It follows, of course, that the cross-appeal is dismissed with costs.

10/10/38.

Sgd. British Puisne Judge
(Copland)

Puisne Judge.
(Khayat)

I agree with the result of this judgment by virtue of the provisions of Sec.54(b) of the Land (Settlement of Title) Ordinance, Drayton Vol.II Chapt 80.

Sgd. Puisne Judge
(Majid Abdul Hadi)

المحكمة العليا بصفتها محكمة استئناف بالقدس

المستأنفون — ١) الشيخ عبد الرحمن يعقوب القاسم
٢) عبد القادر زين احمد
٣) خليل احمد محمد القاسم
٤) صالح خليل احمد عقلة
} من الضفة الغربية سواكم

294/38

المستأنف عليه — الشيخ محمد افندي صلاح من نابلس

الحكم المستأنف — صادر من محكمة اراضي نابلس بصفتها الاستئنافية بتاريخ ٢١/٧/٣٨ في القضية استئناف تسوية رقم ٧ / ١ / ٩٣٨

حكمت محكمة اراضي نابلس المنعقدة بسواكم بصفتها الاستئنافية بفسخ قرار حضرة مأمور التسوية الصادر في القضية المشار اليها وبما ان هذا الحكم مجحف بحقوقي ومخالف للقانون فاننا نتقدم بهذا الاستئناف ضمن المدة القانونية طالبين فسخ هذا الحكم وتأييد قرار حضرة مأمور التسوية للاسباب الاتية

١) ان لمأمور التسوية الصلاحية التامة بعدم التقيد بحرفية القانون وله ان يستأنس بمبادئ العدل والانصاف في سائر احكامه كما جاء في المادة ١٠(٣) من قانون التسوية . وان قضيتنا هذه قد فصل بها كما تقتضيه مبادئ العدل والانصاف ولا يوجد في قرار محكمة الاراضي ما يفيد ان مأمور التسوية تجاوز حدود هذه المبادئ

٢) ان مأمور التسوية قد اثبت عادة متبعة في قريتنا بصورة عامة ويقوم عليها الناس في عدة قضايا وهي ان بعض المالك ارضه الى اخر لاصلاحها واعمارها ثم تقسم بينهما بناصفة ولا شك بان العادة محكمة . وامر في مثل هذا الاتفاق ما يخالف النظام العام ذلك ان المالك قد باع نصف ارضه مقابل الصرف عليها بيعا وغرسها واصلاحها سنين عديدة . ولو حسبت النصف الاخر والمصاريف التي تكلفتاها على اصلاح واعمار هذه الارض مدة ١٥ سنة لتبين بانها تساوي اكثر من قيمة الارض عليه يجب تطبيق روح المادة ٩ من قانون الاراضي في مثل هذه الحالة

٣) اننا منذ ان اخذنا هذه الارض نحن ندفع ضرائبها الاميرية ولم يدفع عنها المستأنف عليه ملا واحدا خلال الخمسة عشر سنة تقريبا

٤) انه لا يوجد لنا ارض اخرى وقد صرفنا جهودنا باصلاحها على هذه الارض استنفدت قوانا ومن العدل والانصاف الا تضيع ثمرة جهودنا بعد هذه المدة الطويلة سدى

٥) لهذه الاسباب الماديه نطلب فسخ حكم محكمة الاراضي وتأييد قرار مأمور التسوية بفعل مبادئ العدل والانصاف التي عليها حضرة مأمور التسوية الذي لمس الوقائع بنفسه وتحقق بوجدانه ان العدل يقضي كما قضى ...

١/٨/٩٣٨

المستأنف — المستأنف — المستأنف — المستأنف

عبد القادر الزين احمد — خليل احمد محمد قاسم

نحن مختار وشبانه وذوي الطرف نشهد بأن الشيخ عبد الرحمن المقصيب القاسم وعبد القادر زيد الوحيد
وخليل محمد محمد القاسم ومصلح خليل أحمد غفة نشأوا ومعاه قريتنا فقراء الحال لا يملكون القوت
الضروري وليس لهم مورد رزق يكفي سد رمقهم ويقوم بأود عائلاتهم المؤلفة من أفراد
كثيرين خصوصاً في هذه الظروف الاقتصادية الصعبة وبما أنهم بدون استئناف قرار
محكمة الأراضي الصادر ضدهم في القضية الاستئنافية تسوية رقم ٢٨/١٧ لصالح الشيخ محمد
أفندي صلاح فإنهم لا يستطيعون تدبير رسوم الاستئناف في أي مثل كان وعدم استئنافهم
يعود عليهم بالضرر البالغ لأنهم أصحاب حق حرج ونعتقد جازمين بأنهم يستحقون
إعفاءهم من رسوم المطالبة وذلك فقد وقعنا هذه المضبطة بناء على طلبهم

حسب الأصول بحضوري

مختار القرية

طبعة الختم

٢٨/٧/٢٠

عضو
سليمان شاره

عضو
عبد الله بن

عبد الرحمن ابو عفيف

سليمان

يوسف محمود منصور

٢٨/٧/٢٠

عبد الغفار بن احمد

خليل حمد محمد القاسم

امارة عبد الرحمن المقصيب

امارة مصلح خليل غفة

حضرة صاحب المحكمة العليا بالقدس المحترم

في طلب

المستأنفين ـ ١) عبد القادر الزين احمد
٢) الشيخ عبد الرحمن يعقوب القاسم
٣) خليل حمد محمد القاسم
٤) صالح خليل احمد عقله
من الطيره التابعة طولكرم

المستأنف عليه ـ الشيخ محمد افندي صلاح من نابلس

طالبين بموجب الاصول (١٩) من اصول رسوم المحاكم لسنة ١٩٣٥

١) بما اننا نرغب في تقديم استئناف ضد الحكم الصادر من محكمة اراضي نابلس بصفتها الاستئنافية بتاريخ ١ ٢/٧/١٩٣٨ في قضية استئناف تسوية رقم ١٧ /٩٣٨ والقاضي بحرماننا من ملكية نصف الارض المنازع عليها والتي حكم لنا بها حضرة مأمور التسوية لمنطقة طولكرم.

٢) وبما اننا عاجزين عن دفع رسوم الاستئناف المطلوبة بالنظر لفقرنا الشديد وظروفنا الاقتصادية العصيبة وضلة مواردنا كما هو مؤيد بالضبطة الموقعة من مختار واعيان قرية الطيره والتصريح المشفوع بيمين والموقع من قبل احدنا المستأنف الاول

٣) ولذلك نتقدم بهذا الطلب بموجب الاصول ١٩) راجين اعفائنا من رسوم الاستئناف المطلوبة لان عدم الاستئناف يضرنا كثيرا وبالختام اقبلوا فائق الاحترام

التاريخ ـ بواسطة مختار قرية الطيره التابعة طولكرم
٣٠ /٧/ ٩٣٨

مستأنف — زنانيري مصلح فضل احمد
مستأنف — خليل حمد محمد القاسم
مستأنف — زنانيري عبد الرحمن يعقوب
مستأنف — عبد القادر الزين احمد

20 [400]

41.
42

In the Supreme Court
sitting as a Court of Appeal
Jerusalem

X Application ~~Conditional~~ Leave to Appeal to the ~~Privy Council~~ His Majesty in Council In accordance with sect. 3(a) of the Palestine (Appeal to Privy Council) Order in Council 1924 from the judg. of the Supreme Court sitting as a Court of Appeal, dated 10/10/38, 1938 in C.A. No 224/38.

Petitioner ~~Applicant~~ – Sheikh Mohammad Salah, landowner of Jaffa,
Place of service – Tahsin Kamal, Advocate – Jerusalem.

Respondents – 1. ~~Sheikh~~ Hussein Abdul Rahman Yacoub
2. Abdul Kader Es-zein ahmad Kassem
3. Khalil Hamad Mohammad Kassem
4. Muslet Khalil Ahmed Akfeh.
all of Tira

X

Application is hereby respectfully made for conditional leave to appeal to Privy Council against the judgment of the Supreme Court sitting as a Court of appeal ~~from the judgment~~ in CA. No 224/38 delivered in presence of parties on 10/10/1938.
The land in dispute is valued at more than £500 sterling. Evidence of valuation on affidavit by a certified valuer is herewith attached
Copies of application with certified copies of judgment for service on Respondents

is attached

For the above mentioned reasons it is humbly prayed that an order be granted for conditional leave to appeal to the Priv Council.

Sheet
Applnt

	L.	P.
App.	4.	—
Prod. (2)		620
Service.		400
Sums.		500
Certified. Judgt N:	2	500
	7	520

٢٨/١٢/١٨

حضرة القاضي الأستاذ زكي أفندي كتبه المحترم

أحييكم وأتمنى لكم كل سعادة

أقدم لحضرتكم ورقة التفاليه المالية مصدقة من قبل البنك العربي

حسب طلبكم وعنها فهي تحت نظركم

بخصوص نقاط الدعوى هي موضحة بالأوراق الموجودة في الملف الذي

عند حضرتكم . وأرجو أن لا يسعني عن بالكم نقطة أن شيئاً في التفاليه الذي حضرتكم

خذوا من محكمة الأراضي بخصوص الأتعاب فإنها لا بد من رفع هذه النقطة

الى مجلس الملك . إذ أنه لم يرد أي حكم بين بخصوص الصرف . ولم

طلب المستأنف عليهم في محكمة الأراضي الحكم لهم في المصاريف . فتقرير المحكمة في هذه

النقطة هو من أخطاء نفسها هو مخالف قانوناً . من جهة ومن جهة أخرى

إننا ذكرنا أمام مأمور النوبة ومحكمة الأراضي هذه النقطة وبينا أن

الذي كان يعرف على الأرض هو الشيخ محمد أحمد صالح .

وعلى كل حال الأرض ولبد أحمد صالح قدم الى النقاط في الدعوى هذه

وأني أضع تحت نظركم . هذا وأرجو من همتكم العالية أن تشملونا

بأهتمامكم . والسلام

سبق أن بعض الأخوان طلبوا البنا صورة من حجة الهبة عند قلم محكمة الأراضي

العليا بدعوانا هذه أرجو أن تتكرموا علينا بإرسال الصورة لنذكر

الخادم

وتكم الله

١ - أن المسألة الأولى التي تنشأ في دعوانا هو أن مأمور التسوية قضى في أربعة قضايا يختلف في كل منها المدى بناء على شهادة في دعوى واحدة وحتى في هذه الدعوى لم يكن لديه بينات قانونية إذ أحد الشهود يقول أنه يعلم أن أتفاقية مثل هذه عقدت وأنه لا يتذكر بخصوص أية أراضي عقدت فإن شهادة مثل هذه لا يمكن اعتبارها قانونية لعدم التعيين.

٢ - أن مأمور التسوية ومحكمة الاستئناف قررتا أن مأمور التسوية له الحق في الرجوع لقانون العدالة والإنصاف وأن بموجب ذلك كان يحق له أن يسجل الأرض على المدعين ولكن ذهب عن محكمة الاستئناف نقاط قانونية أساسية

أولاً أن المادة ١٠ (٢) من قانون التسوية تنص على أن مأمور التسوية مقيد بقانون الأراضي وأن يشترط الرجوع إلى العدالة والإنصاف أن المسائل التي تنشأ هنا هي (١) متى يجوز لمأمور التسوية الرجوع إلى قانون العدالة والإنصاف

(٢) هل يمكنه أن يطبق العدالة والإنصاف حتى لو كان مخالفاً لقانون الأراضي أم لا.

أما بما يتعلق بـ (١) فإن المسألة مسألة تفسير بسيط فإن المادة تجزم بلزوم تطبيق قانون الأراضي ولكن عندما يكون النص ناقصاً في قانون الأراضي يستمد القاضي حق الحكم من قانون العدالة وحتى نتوصل إلى معنى المادة الصحيح يجب أن نقرأ هذه المادة مع المادة ٤٦ من دستور فلسطين إذ تنص المادة على أنه يجوز استعمال قانون العدالة والإنصاف والقانون العام في الأحوال التي لا يوجد نص صريح في قوانين الكنيسة أو القوانين العامة ولا ويجوز إصدار أي عدد من مجلس الملك الخاص. وإذ نرى أن دستور فلسطين نص على أن كل قانون يخالف نصوص دستور فلسطين باطل نتوصل إلى النتيجة أن المادة (٢) ١٠ من قانون التسوية يجب أن تفسر بموجب روح دستور فلسطين وبذلك لا يمكن أن نتوصل إلى تفسير غير أن على مأمور التسوية تطبيق قانون الأراضي وأن رأيه لا ينص على حالة

معينة يرجع إلى قانون العدل والإنصاف

٧ - وانتهت محكمة الاستئناف العليا بقرارها في قضيتنا أن المزارع هي معاملة تعرف حسب المادة (٤) من قانون انتقال الأراضي وكذلك بدون شكل فإن معاملة بيع هذه باطلة بموجب المادة ٤ و ١١ من ذات القانون وهذا لم يختلف فيه اثنان. أما إذا أدى معاملة تعرف بالعرف فالمسألة التي تنشأ هنا هي:

هل يمكن لقانون العدل والإنصاف أن يؤثر على معاملة باطلة بموجب قانون البلاد؟ إن هناك مبدأ مشهور في الجملة والقانون الفرنسي والروماني والإنكليزي أن الباطل لا يفيد الحكم أصلاً. أي أنه إذا كانت هناك معاملة باطلة فإن القانون لا يعطيها أي حكم. فنأتي الآن إلى قانون العدل هناك نص معروف في القانون الإنكليزي (١) أن العدل والإنصاف لا يمكن أن تؤثر على معاملة باطلة بموجب القانون المكتوب وهناك نص (٢) ثاني هو أن العدل والإنصاف يجب أن تتبع القانون. فجميع هذه المبادئ مقررة بقضايا من مجلس اللوردات في إنكلترا إلا أن محكمة الاستئناف العليا تسبب بجهلها تجاهلت هذه المبادئ المقررة.

٨ - محكمة الاستئناف العليا أدت نظريتها أن العادة لا يمكن أن تؤثر في حالة وجود قانون مكتوب وذلك بناءً على المراجع الإنكليزية التي أشرنا إليها. أي أن العادة إذا أثبتت تفيد الحكم في حالة وجود قانون عام أي قانون غير مكتوب ولكن إذا كان هناك قانون مكتوب فيعمل بالقانون المكتوب ولا اعتبار لقانون العادة مثلاً عندنا.. تنص المجلة مثلاً أن الأجرة يجب أن تكون معينة مثلاً لم نعينها والعادة المتبعة هي دفع مثلاً ١٠ قروش يومياً للأجير عندئذ تتبع هذه العادة لعدم وجود نص صريح.

العليا

٥ - بينما المحكمة الاستئناف أن المستأنفين لم يبنوا أية نقطة قانونية في لائحتهم الاستئنافية وأن المادة (٢) ٦٤ من قانون التنظيم لا تجيز الاستئناف لمحكمة الاستئناف الا بناء على نقطة قانونية وعلى هذه النقطة كان يجب للمحكمة رد استئناف المستأنفين واستندنا على قرارات لتلك المحكمة صادرة سنة ١٩٢٨.

٦ - محكمة الاستئناف حكمت في قضايا شابه لقضيتنا وكانت الوقائع بين الوقائع في قضيتنا الا أنها تجاهلت الأمر ولم أشارتنا كثيراً إلى تلك القرارات وهناك مبدأ مقرر أن على محكمة الاستئناف أن تتقيد في قراراتها وإذا أرادت مخالفتهم عليها أن تقرر بين قرارتها الحديثة والقديم وهذا لم تفعله محكمة الاستئناف.

وهذا المبدأ معتمد جداً في انكلترا.

أخي

أخي عمر أحمد

عبد السلام عليكم أرجو أن ترسلوا إليكم هذه الأوراق وأظن تفيدكم
وفي رأيي يجب أن تكون النقاط الأساسية في استفساراتكم لمجلس الملك.
مع أضافة ما قلناه عن الاستفسارات المقابلة والمبينة في لائحتنا الجوابية
وإذا أردتم أن أكتب لكم في هذه النقاط أيضا فأرجوا أرسال
لائحة سؤالكم . هذا ما لزم وبالختم وتم للمنصب

عنواني
صيدا
العمدة المركزية وليد صلاح بواسطة كبار أحمد كاتب عدل صيدا

نموذج و.م. ٤١١

شهادة طبية بالعجز عن الحضور الى المحكمة لسبب المرض

انا الدكتور مصطفى برشناحه الطبيب المجاز لي في نابلس ، فلسطين

اشهد بانني قد عاينت بنفسي اليوم الشيخ محمد احمد صلاح من نابلس

ووجدته بنتيجة المعاينة يشكو من العمى منذ شهرين تقريباً وقد هزل جسمه هزالاً شديداً مع تزل النوبات اليومية تعاوده

واني مقتنع تماماً بان العمى اليه لا يستطيع وهو

في حالته الحاضرة احتمال المحاكمة*

او الحضور الى المحكمة كخصم* او كمحام*

او ان يحضر الى المحكمة كشاهد*

في اليوم الرابع عشر من شهر ايلول سنة ١٩٢٨

واني اعتقد بان العمى اليه يستطيع احتمال المحاكمة*

او الحضور الى المحكمة كخصم* او كمحام*

او ان يحضر الى المحكمة كشاهد*

بعد مدة اسبوعين من تاريخه

(التوقيع) دكتور مصطفى برشناحه

حامل الاجازة رقم

التاريخ ١٢/٩/٩٢٨

* اشطب العبارات التي لا تنطبق على حالة المريض

MEDICAL CERTIFICATE OF INCAPACITY TO APPEAR IN COURT ON ACCOUNT OF SICKNESS.

I _____ a licensed medical practitioner of _____, Palestine, hereby certify that I have this day personally examined _____ and find him to be suffering from _____

I am fully satisfied that _____ in his present condition is as a fact unfit

to stand his trial*

or

to appear in Court as a party* / *or* an advocate*

or

to attend in Court as a witness*

on the _____ day of _____ 19 ____

I am of opinion that _____ will probably be fit

to stand his trial*

or

to appear in Court as a party* / *or* an advocate*

or

to attend in Court as a witness*

after a period of _____ days from the date hereof.

Signed _____
(Holder of Medical Practitioners' Licence No. _____)

Date _____

* Strike out the cases which are not applicable.

26444—3000—24.4.35—G.C.P.

الدكتور احمد الطاهر
من جامعة الطب في ليون (فرانسا)
نابلس * فلسطين
تلفون ٧٩

Dr. Ahmad el-Taher
DE LA FACULTE DE MEDECINE
DE LYON (FRANCE)
Nablus — Palestine
TEL. No. 79

الاسم الشيخ محمد اسعد صلاح من نابلس
النمره

نابلس في ١٧/٨/٢٨
Nablus Le .....

اعلمه انني افحص لاخر مره بتاريخ الشيخ محمد اسعد صلاح واشهد انه مصاب منذ ١٥/٧/٢٨ لغاية الان بمرض الملاريا الخبيثه وانه لا يزال تحت عنايتي الطبيه وهو طريح الفراش

الدكتور احمد الطاهر

(2)

استئناف ٢٠٠ / ٢٢ اراضي

اري بان العقد المبرز في هذه القضيه هو عبارة عن عقد مقاوله معروف ومألوف في هذه البلاد من شأنه ان يقدم احد الطرفين الارض والآخر العمل والغرس على ان يقسم العقار المغروس بعد مضي مدة معلومه بين الشركاء بنسبة مقررة سلفا ففي هذه الحاله تكون يد المغارس يد امانه ولا يمكن ان يجري بحق الطرف الثاني مرور الزمان — ورفعا عن القيد في الطابو فهو بمثابة التصرف المأذون ناتج عن عقد كالاجاره والرهن وبما ان المستأنفون قد — اختاروا بدلا من استرجاع الارض بموجب العقد المذكور القبول ببيع ما ينوبهم من الارض المغروسه بالف ليرا — فرنساوي لذلك اري لزوم تصديق حكم الابتدائي ورد الدعوى على ان المستأنفين لهم الخيار باقامة دعوى امام المحكمه ذات الصلاحيه للمطالبة بحقهم بالمبلغ المذكور وفقا لما تقرر في الدعوى نمره ٦ / ٩٣١ تملك والحكم بالرسوم والمصاريف / ١٦ / ٦ / ٩٣٤ .

مصطفى خالد العمدي فرانسيس بيكر

Missing documents

1. Statement of claim befor L. S. O.
2. Statement of defence in L. Court.
3. Proceedings before Land Court.
4. " " Court of Appeal

Mr. Aron J. Arotchas.

P. O. Box 377

Jerusalem

Sir

~~Dear Sir with~~ Referring to my letter of the 12th Instant

I have been instructed by my client

Hussein Aly El Maleh

اعلام شفاعت
وسليم افندي اوعلى من اشبع
نجب

TulKarm
15.11.38

In the Supreme Court,
sitting as a court of appeal, Jerusalem

In civil appeal No. 224/38
Sheikh Mohd. Eff. Salah, represented by Nejib Germanus, advocate of Jerusalem. — Petitioner

V.

1. Hussein Abdul Rahman Yakoub Kassem,
2. Abdul Qader Ez-Zaben Ahmed,
3. Khalil Hamad Mohd. Kassem,
4. Muslih Khalil Abou Akafeh, all of Tira village, TulKarm S.D. — Respondents

Statement of reply by Respondents on application for leave to appeal to His Majesty in Council from the judgment of the Supreme Court in civil appeal No. 224/38 submitted by petitioner and served on 13.11.38

Respondents object to the a/m application for leave to appeal for the following grounds:

1. Valuation of the land in dispute is not given by a proper authority (Land valuer or the like). Such valuation by an affidavit is an informal conjecture.

2. Judgment of the Supreme Court is based on a finding of fact and a question of equity within the meaning of Section 10 of the Land (Settlement of Title) Ordinance. It follows therefore that the appeal is devoid of any point of law.

3. Stay of execution is against the spirit and object of the Land (Settlement of Title) Ordinance, which aims at speedy action.

Whatever might be the case, the remedy is the application of Section 49 of Land (Settlement of Title) Ordinance.

It is accordingly prayed that leave to appeal to His Majesty in Council may be refused.

Respondents.

عبد القادر حمزة احمد خليل الحمد القاسم صلح خليل ابو عقوم عبد الرحمان يعقوب

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Legal 166.

GVR
PALESTINE

№ 487509

RECEIPT وصل קבלה

In the القدس Court at الرملة
בבית משפט ה — לדי محكمة — בפני — في — at

*Civil—Criminal Case / Civil—Criminal Appeal No. ٢٨/٤٤٤
*استئناف—القضية الحقوقية/الجزائية — קרעור אזרחי־פלילי — מס׳ — رقم — משפט אזרחי־פלילי — القضيه الحقوقية/الجزائية

V.
נגד
ضد

Received from الحاج وليد أنيف صلاح
נתקבל מאת — لقد استلمت من

the sum of L.P. ثلاثة وخمسون شيكل
מבלג ל.פ. — مبلغ ج.ف. — הסכום של פ״ם (אותיות)

(amount in words)
(בדרך המבלג כתיבה) — (بدرج المبلغ كتابة) — הסכום (במלים)

in respect of ١/٢٥٠ س
לסלוק — وفاء لـ

Date ٢٨/١٠/٥٠ التاريخ תאריך

Court Clerk/Cashier كاتب المحكمة/امين الصندوق
טופר בית המשפט/קופאי

Signature الامضاء חתימה

*Strike out words inapplicable. *מחק את המלים שאין צורך בהן * اشطب الكلمات الغير مطابقة

GPP. 3990—5000 Bks. 20-6-46—100/3.

Legal 166.

PALESTINE

Nº 487509

RECEIPT קבלה وصل

In the القدس Court בבית משפט ה of في של at الاستئناف לדון محكمة

*Civil—Criminal Case / Civil—Criminal Appeal No. ٢٨/٢٤٤ משפט אזרחי־פלילי / ערעור אזרחי־פלילי מס' رقم

V. נגד ضد

Received from المال وليد أنف صلاح נתקבל מאת لقد استلمت من

the sum of L.P. مائة وخمسون مل סכום של ל"מ (א"י) مبلغ ج.ف.

(amount in words) סכום (במלים) (يدرج المبلغ كتابة)

in respect of ١٥٠/س לפלוק وفاء لـ

REGISTRAR-JERUSALEM
FILES RESERVED
20 OCT 1939

٢٨/١٠/٢٠

Date التاريخ תאריך Court Clerk/Cashier كاتب المحكمة/امين الصندوق טופר בית המשפט/קופאי

Signature الامضاء חתימה

*Strike out words inapplicable. *מחק את המלים שאין צורך בהן * اشطب الكلمات الغير مطابقة

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1) Said Iraqi Page 4 — I do not remember

2) Mohammad Bistawa — unknown

(3) Mohammad Jundiya Page 2 I do not know exact point of offer

4) Abdul Rahim al Keshiya

5) Mustafa Salah Mawas do not know Page 4

(6) Nairullah

(7) Yusef Mahmud Mawas called Jamal Jamal 6

Pl 319 not appeared

Pl 317

Pl 316

Hasan Karram — 317

10

There are no points of law raised in the statement of appeal on which this appeal ~~might be heard~~ might be decided as required by sect 64(2) of the Land Settlement of Title Ordinance. For this reason alone the appeal ~~should be dis~~ appellants should be dismissed.

Furthermore.

Appellant allege that the S.O is not bound by the words of law and has the right to be enlighted by the

The S.O. officer is bound by the land law sect 10(3) and may have regard to equitable as well as legal rights to land

The Court of appeal has already held in several judgments that a mugharasa agreement is illegal within the meaning of sect 11 of the Land Transfer Ordinance

Distinction between customs and usage Hashim CO Page 5 see last

Appeal fails and is not settled.

5

72
42/38

288
322

160/38
July 11

other or no point of law raised in the statement of facts I do indeed think appeal ~~might be heard~~ might be decided on equity & regard to (2) of the land settlement & title ordinance. For this reason the appeal should be dismissed. Costs follow.

Counsel alleges that the D.C. is not bound by the work of law and he might & he unlighted the

The D.C. office is bound by the land law act 10(3) and my decision appears to be a legal right & the land applied for already held is a legal property that a trespasser appearing is illegal within the meaning of sect 11 of the land transfer ordinance

Detention returns — you have not proved the claim to the 5 acre lot

Appeal fails & is dismissed.

CA 83/83 S.C.J. May Pat v.

No legal evidence to support findings

~~CA~~. Jaffe 18/32 Pat vol 11 Page 676

Rule custom with regard to right or interest in land, in order to be clothed with the force of law, must have existed for such a period that its origin has been lost sight of so that it may be said to have existed ab antiquo or as the Expression goes for such a period "that the memory of man runneth not to the contrary"

A valid custom must be immemorial antiquity, certain and reasonable, obligatory, not repugnant to statute law,

Vol 10 Page 32 Extinguishment of Custom.

Custom & Usage Page 5 4

Sect. 42 Land Court questions concerning the title of Immovable property.

Jurisdiction

Has the settlement officer or the Land Court jurisdiction to deal with the question of compensation or assessing amounts paid

no
(1) sect 11 clear
(2) judg.

طلب الرسوم والمصاريف بداية واستئنافاً

L.A. 20/33 —

1. المقدس بدايات

2. لا يمكن أن يكون ذلك

3. شبه تصرف ناقلون

CA 90/32 L.R. 816 vol 1.

Land Transfered Sect 11.

Sect 2 disposition means sale other disposition of immovable property.

money

Plt. 173

(2) [illegible] Beska.a
(3) Ahmad Iraqi — present in Iraq

Muhammad Jundeja

Muhammad Suleiman

Abdo. Rahi al Kashkeja heavy evidence

Said Said Iraqi also one or other was made.

Muslet Bilal Mawas

311

Sarolitrin b. v. Leppner
& others LH 88/25

— A —

CA 193/38
Kerr 114 138

it was not in the agreements that defendant should pay all expenses of cultivation and maintainance. Defendant's witnesses do not help his case. One relates how defendant sold the produce to another in 1931 – i.e. his half share of the produce – and, when plaintiff objected and said he had a better right to it than any "foreigner", was told he had half the trees. The same witness says that at the tahkim the land was shown in both defendant's and plaintiffs' names. The second witness was not present at the agreement, and only knows that defendant once refused to give one of the plaintiffs half the land and half the trees. The third witness states the circumstances of the leasing by defendant of half the trees to another and adds that defendant said "You own half the trees" also, and again "You own half the fruit".

Defendant's 4th witness, Hasan Kharewi, has already been mentioned.

The deduction the most likely to be true from defendant's witnesses' statements is that plaintiffs in these parcels owned half the trees. The deduction the most likely to be true from plaintiffs' witnesses and the testimony of independent witnesses and the custom of the village is that there was a mugharasa agreement whereby plaintiffs were to get half land and half trees. Now, it is a fact that at the present time the trees are more valuable than the land. It follows that all the

Cases 173, 316, 317, 319/Tira. Final Parcels Nos 7733/11

Case 173. Plaintiffs: Husein Abd Alrahman Yaqob Qasim 7776/24, 25, 26

Case 316. —— Abd al Qadir Zein Ahmad.

Case 317 —— Khalil Hamad Muhammad al Qasim

Case 319 —— Muslih Khalil Ahmad abu Al'kafa

Defendant:- Muhammad Hasan Salah

Decision of Settlement officer,
Tulkarm Settlement Area.

The record of proceedings in these cases is found in No. 173/Tira. The cases are alike, and concern plaintiffs' allegations that, some 15 years ago (in case 317/Tira, 8 or 10 years ago) defendant handed over the parcels to them, one to each, on a "Mugharasa" agreement whereby plaintiffs were to plant the land with fruit trees, maintain them in good condition, pay all expenses of cultivation, and in return receive one half the land and one half the trees upon it. Defendant maintains that there was never any such agreement, that plaintiffs agreed to cultivate the trees and look after the plantations in return for one half the produce of the trees only, and that defendant was to have borne, and did bear, all expenses in connection with the work, other than, of course, the labor of plaintiffs.

There was no "Mugharasa" agreement in writing. There was no agreement such as defendant cites in writing. On that matter, the parties are equally to blame.

Defendant's contention is that plaintiffs' tale is entirely

imaginary, and that the plea of local custom in support of their claim cannot establish their case. Nor, he states, can there have been any question of mugharasa because some time limit would have to be given after which the land and trees would become the property of plaintiffs.

It is true that custom cannot establish a claim of this sort, but the question of a time limit is not so easily disposed of. Conditions being as they were, I see no reason to doubt that plaintiffs were de facto the owners of the half land and half trees, and it is notorious that the act in law which would settle them in title was not carried out in this or in nine cases out of ten of which I have personal knowledge. It is admitted by defendant that the cost of upkeep of the property is very low, and that would account for the ignoring of the time limit if cultivation and expenses by plaintiffs were not to continue, by the agreement, after the trees came into bearing. This aspect of the case corroborates my deductions from the evidence taken.

All witnesses agree that, whatever was the exact agreement, it was similar in all the cases now under review. I decided to hear verbal evidence in support of plaintiffs', as well as defendants' statements because it is impossible otherwise to decide a matter for which not one paper, except tax receipts, was produced.

There is definite evidence in favor of plaintiffs'

story: of one who was present when one of the agreements was made of another who was present at one agreement, but which he does not remember, and whose inference is that it was the customary 'mugharasa'; and of tithe receipts showing that plaintiffs actually paid the taxes, though that by itself ~~establishes~~ establishes nothing. Then there is the man, Haram Kharewi, whom defendant specially asked should be called. This man originally made an agreement with defendant on the same terms as the others. He had started by asking half the land and half the trees and defendant refused at first, saying that he should have half the trees only. Finally it was arranged (verbally of course) that this man should come in on similar terms to the others, which I believe he did in the genuine understanding that these terms were the customary mugharasa ones. After a few years, he could no longer provide the oxen to cultivate the land, and he was evicted by defendant, also according to the terms of the agreement. When asked by defendant why he should leave the land if he was to have had half, he replied that at that time he was so poor that he could not have accepted all the land had it been offered. Incidentally and importantly, from this and other evidence emerges the fact that this man was compensated for the fencing he had done around the parcel, by defendant on his giving it up, or was given a gratuity of LP. 12 or so for that or for some other reason. This shows that

improvement in the land for some 15 years past has been carried out by plaintiffs by their own labour and at their own expense. Defendant was absentee proprietor. The land is not registered in the Talu in his name. It was cultivated by plaintiffs who paid, at least, part of the taxes, and cultivated under conditions that would prima facie support a claim for a possessory title to the whole land in their honour, had they so claimed. I do not see any excuse for defendant's not having registered the property in his name. I see no excuse for his omission to execute a deed laying down the terms and privileges of the alleged arrangement with plaintiffs, if only for the ~~that~~ consideration that an averse claim to the land was possible and was, in fact, made.

For these reasons, I find for plaintiffs, and order that each parcel shall be registered in one half share of land and trees upon it in name of defendant and one half of land and trees upon it in the name of the plaintiff who claims rights in each particular parcel.

Defendant is to pay LP 10.000 hearing fees.

Read to parties in Tira this 15th day of November, 1937

Settlement Officer

Tulbahrm Settlement Area

15.11.37

1. Appellant did not base their appeal on any point of law as required of sect. 64(2) of the Land Settlement Ordinance.

Appellant in their statement of appeal deal on the judgment of the Settlement Officer and not on the judgment of the Land Court. This is an appeal from the judgment of the Land Court and not an appeal from the judgment of the Settlement Officer.

There are therefore no merits in this appeal and it should be dismissed

2. Appellant state in their Grounds of appeal that the Settlement Officer is not bound of the wording of the law. Sect 10(3) states that the S.O is bound of the land law

The Court of Appeal has already held in several judgments, that a mughawa agreement is illegal and contrary to sect. 11 of the Land Law Amendment Ordinance

3. It was alleged of ~~Defendant~~ Appellant that they proved the existence of custom in their village

This they did not do.

Custom in order to be of legal effect must be

1 immemorial.
2 must have obtained the force of law in a particular locality

Appellant did not be at this appeal on any point of law as required by sect. 64(2) of the Land Settlement Ordinance.

Appellant in this statement of appeal does the judgment of the Settlement Officer and not on the judgment of the Land Court. This is an appeal from the judgment of the Land Court and not from the judgment of the Settlement Officer.

Therefore in view of this appeal and it should be dismissed

2. Appellant states in this Ground of appeal that the Settlement Officer is not bound by the ruling of the Law. On this (3) states that the L.C is bound by the land law

The Court of Appeal has already held in several judgments, that in judgments appeals to illegal and contrary to sect. 11 of the Land Law Ordinance

3. It was alleged by Appellant that the Appellant that the proved the existence of a custom in this village this the old area. Custom is evidence to be of legal effect must be

1. immemorial
2. must have attained the force of law in
3. a particular locality

W. A. SALAH
ADVOCATE
P.O.B. 46 Tel.

وليد عبد اللطيف صلاح
المحامي
ص. ب. ٤٦ تلفون:

Nablus ..... نابلس

(١) المستأنف عليهم لم يطلبوا رفض دعواه ولا يجوز للمحكمة من تلقاء نفسها أن تقضي بذلك

٢٢/C.
٨٤٦ ٢٢/٩٠ CA
90/33 CA
Goodly 141 & 146
60(2)
60(3)

Land Transfer ordinance sect 11

27(2)
57(2)
3

1) There was no evidence before the settlem Officer & Land Court to hold that there was a mughasa agreement. Plaintiffs having failed to prove and establish this facts.
2) Even if it is supposed that there was such evidence before the Settlemt O. then sect 11 of the Transfer ordinance has to be applied.
3. The Land Court erred in law in remitting the case to the S.O.
4. S.O ~~jurisdiction~~ judicial jurisdiction sect 10 & 3 & 7 Land ord.
5. Both parties were disputing title none claimed compensation and the Court could not raise this questions of its own motion
6. S.O is not the proper Court.
7. Equity is inapplicable here as there are adequate remedies for Respondent as the law stands.
8. There are many point of fact which are purely civil which have to be established and which the S.O has no power and provisd to deal with
1. Many part of them includes also labour or not

the actual amount Plaintiffs spent
The time of year they did so.
How many years are the trees matured etc.
The Land Court ~~based~~ erred in its decision on sect 60 (2) & (3)
of the Land Settlement of Title Ord. as such section
does not give such power to the Lcd to apply such remedy.

Facts of the case

Appellant ~~owns a piece of land within the village~~
of ~~Tsia and is in possession~~ is the registered owner
of a piece of land within the village of Tsia

لجان هيئة محكمة الأراضي بنابلس الموقرة
لصفتها محكمة الاستئناف

الموضوع: عرائض استئناف قرار مأذون تسوية الأراضي لطولكرم المعطى
بالقضايا ١٧٧ و٢١٦ و٢١٧ و٢١٩ طيره

تاريخ الحكم ٢٧/١١/٢٥

المستأنف الشيخ حمد حسن مذكور

المستأنف عليهم
حسين عبد الرحمن يعقوب قاسم
عبد القادر الزبد أحمد
خليل حمد محمد قاسم
مصطفى خليل أحمد الرعقط
جميعهم من أهالي قرية الطيرة طولكرم

فإن مأذون التسوية لطولكرم أصدر حكمه تاريخ درجة أعلاه حسب وهو يقضي بتثبيت نصف الأرض التي تملكها على اسم كل واحد من المستأنف عليهم وكنت طلبت إذن باستئناف الى سعادة رئيس محكمة الأراضي بنابلس فمنحني إذن بذلك. وعليه بادرت لتقديم استئناف هذا ضمن المدة القانونية أعرض لحضرتكم الموقرة الأسباب الآتية

ان حادث المسألة هي انني اعلمت قطع الأرض واتصبح ضمن أرض قرية الطيرة واتصرف بها بصفتي مالك. ان المستأنف عليهم قاموا بشغلوا من أراضي بصفتهم مزارعين على جزء من الحاصلات مقابل مباشرتهم وحراستهم وذلك بأذن مني وتحت تصرفي ومراقبتي وكنت أرش مصاريف اصلاح الأرض وزراعتها شجر مثمر مثل التين والعنب وما يشبه ذلك كما ذكرت في أثناء المحاكمة أمام مأذون التسوية

صحيفة
٢

١ — ادعى المستأنف عليهم انهم سلمتهم قطع الأراضي بطريق المقايضة على ان يكون لهم فيما بعد نصف الأرض والشجر ولم يثبتوا ذلك بينة شرعية ولا قانونية وقد انكر هذه الادعاء وبينت ان صفتهم هي عمال لديه بالأرض ويجرون عليها ويحافظون على الأرض والشجر في القائم المنازع عليها سماه المستأنف عليهم حسب ادعائهم هذا مخالف للقانون كما هو مبين اعلاه

٢ — ان تصرف المستأنف عليهم بالأرض والشجر لم يثبت تصرفا ناقلا مطلقا كما وانهم اعترفوا بأن تصرفهم كان بطريق المقايضة فيكون تصرفهم والحالة هذه نافذ وارد ومعلقا على مرضاة عند عدم ان شئت ابقيتهم في الأرض وان شئت اخرجتهم منها وان المقايضة فهو لا يملك حق تمليك الأرض او رهنها او اجارتها او زراعتها ولا انشاء ابنية عليها والمقايضة ما خرج عن كونه عقد معاوضة مقابل انتفاع بجزء من الشجر

٣ — لقد عرف علماء القانون التصرف بأنه الانتفاع المطلق بالأرض بأوسع الطرق فالمستأجر الذي يتصرف بالأرض لا يعتبر متصرف الملك ويؤيد هذه النظرية ان القانون لا يعتبر المزارع الذي يضع يده في الأرض مدة السنين مالكا للأرض ومتصرفا بها

٤ — ان المقايضة يمكن ان تترك عند رغبة لصاحب الأرض ان يطرده من الأرض ويتحرر نهائيا كما ثبت امام محكمة التسوية في بعض قضايا هذه

٥ — ان قانون انتقال الأراضي لسنة ٩٢٠ و ٩٢١ ينص على كل من يرغب في اجراء معاملة التصرف بأرض عليه ان يحصل اولا على موافقة الحكومة خطيا وان المادة فقرة تعتبر ملغاة وباطلة كل معاملة تصرف لم تقترن بالموافقة المطلوبة الخطية على ان يجوز للمشتري مالا في معاملة تصرف اعتبرت باطلة . وان يسترد ما دفعه اقامة دعوى لدى المحكمة المختصة

٢٨/٢٢٨ ذا - حالة انتفاء نبض عدم ساعات فوالفوشاه

٢٨/٢٢٨

٦ — ان محكمة الاستئناف العليا قد قررت في قضية رقم ٩٢٢/٩٠ استئناف اداري [حرف] ضد شلب الدين ما يأتي —

١ — ان يد المغاربة يد امانة

٢ — ان التصرف بهذه الحالة هو بمثابة التصرف المأذون ناتج عن عقد كالاجارة والرهن

٣ — ان في هذه الحالة لا يمكن ان يجري مرور الزمان بحق الطرف الثاني وكذلك قررت محكمة الاستئناف العليا بقرارها رقم ٩٢٢/٩٠ ص ٨٤٦ من مجموعة قاضي القضاة ان المغاربة على نفقة الارض والشجر معاملة تصرف مخوع بموجب المادة ١١ من قانون التصرف بالاموال الغير منقولة وان كل ما للمغاربة ان يعمله هو ان يطالب بما صرف على الارض فيكون بهذه الحالة قرار مأذور التسوية الآنف الذكر مخالف لصورة قطعية لقرارات محكمة الاستئناف العليا مع العلم ان مأذور التسوية مقدم بحسب الفقرة ٢ من المادة ٢٧ وتحقيق الملك من قانون تسوية الاراضي وعملا بالمبدأ القانوني الذي اقرته محكمة الاستئناف العليا بقراراتها المذكورة والمبرز من صورة عنه في ملف القضية يطلب الاذن بالاستئناف فقد وعملا بالفقرة ٢ من المادة ٥٧ من قانون التسوية الطلب تشكيل محكمة وعرض الامر والحكم بفسخ قرار مأذور تسوية الاراضي والحكم بملكية وعملا بالفقرة ٢ من المادة ٥٧ المذكورة اطلب اعطاء الامر بتسجيل الاراضي المتنازع عليها على اسمي وتبيع تحت عند المسجل الاراضي لطولكرم مع تضمين المستأنف عليهم جميع الرسوم والمصاريف القانونية بداية واستئنافا واتعاب المحاماة واقبلوا احترامي

المستأنف

Settlement Appeal No. 17/38.

In The Land Court of Nablus (Appellate Capacity).

Before: His Honour Judge W. Clive Curry, A/President.
His Honour Judge Muhammad Bey Baradey.

In the appeal of:

Shiekh Muhammad Salah, of Nablus. Appellant.

1. Shiekh Abdul Rahman Yacoub Kassem.
2. Abdul Kader Ez-Zein Ahmad.
3. Khalil Hamad Muhammad Kassem.
4. Musleh Khalil Ahmad Abfeh. Respondents.

Appeal from the decision of the Land Settlement officer, Tulkarm Settlement Area, dated 15th November, 1937, in cases Nos. 173, 316, 317 & 319/Tira.

Judgement.

In this case the Land Settlement Officer, after hearing the evidence of the parties and their witnesses, found that appellant handed over the land which was not registered, to the respondents in a "Mugharasa" agreement whereby, in return for the respondents' planting and cultivating appellant's land the respondents become owners of one half of the land and trees. The Land

Settlement Officer having heard the witnesses we see no reasons for disagreeing with his finding of facts. The Land Settlement officer as a result of these findings, ordered that one half share of the land and trees upon it should be registered in the name of the respondents. The appellant has appealed on the ground that "Mugharara" was a void disposition as the written consent of the Government had not been obtained in accordance with section 4 of the Land (Transfer) Ordinance.

Following the judgments in C.A. 90/32, 20/33 and 90/33 we hold that the agreement between the parties in this case was a disposition under section 11 of the Land (Transfer) Ordinance to which the written consent of the Government was necessary and as that consent was not obtained, the agreement was void but that the respondents are entitled under the aforementioned section to recover the money spent by them in improving the land. Such money should include also remuneration for the respondents' labor as, in our opinion, such money and labour formed the consideration for ~~the~~ the void disposition as laid down in Civil Appeal 90/33 (see Goadby on the Land Law of Palestine pp. 141 & 146).

On these grounds and in view of the circumstances of this case we find it would be

inequitable and unjust were the respondents to be deprived of the fruits of their exertions and of the money they expended on the land, it being borne in mind that it was solely due to their ceaseless and untiring efforts during a period of nearly fifteen years that the land was converted into a thriving orange grove, while appellant contributed neither money nor labour to the cultivation of this ~~[illegible]~~ property. We therefore feel that on principles of equity and justice a remedy should be provided for them without their going to the enormous trouble and expence of seeking a remedy ~~of~~ by action in the appropriate Courts and before the land and trees are registered wholly in the name of the appellant, as in the event of the respondents having to institute a separate action, especially after they have ~~[illegible]~~ vacated possession and after the land and trees have been registered in appellant's name, litigation between the parties is liable to be protracted apart from the expence and trouble that would be caused to them, before they are in a position to recover compensation, should they ever be able to do so.

We therefore think that, on the analogy of section 60(2) and (3) of the Land (Settlement of Title) Ordinance, the Settlement officer may apply

such remedy and may fix the appropriate compensation (including money and compensation for labour) and charge such compensation on the land, after such land and trees have been registered wholly in appellant's name.

The decision of the Land Settlement Officer is therefore set aside and the case is remitted to him to proceed as directed and give a fresh decision.

Costs to follow the event.

Given this 30th day of June, 1938

Judge

President

W. A. SALAH
ADVOCATE
P.O.B. 46 Tel.

وليد عبد اللطيف صلاح
المحامي
ص. ب. ٤٦ تلفون:

Nablus نابلس

قابلة ١٧٢

أنفانه صبحه عبد الرحمن بيضر

صفة كنت أر

(١) محمد بشاره

(٢) سعيد الدراني

(٢)

(٢) أبو داود مختار

In the Supreme Court
Sitting as a Court of Appeal
Jerusalem
~~Privy Council Appeal No ... of 1938~~
In Civil Apeal No. 224/38

Sheikh Mohamad Salah, represented by his attorney ~~Henry Cattan and~~ Negib Germanus Advocates of Jerusalem. Petitioner.

v

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez-Zein Ahmad,
3. Khalil Hamad Muhammad Kassem
4. Muslah Khalil Ahmad Atkfeh Respondents.

all of ~~Jiret~~ Et-Tira village. Toul Karem sub-district,

Application for leave to appeal to His Majesty in Council from the judgement of the Supreme Court in Civil Appeal 224/38 dated the 10th October, 1938.

The petition of the ~~Petitioner~~ Shewett:

1. That judgment against the ~~applicant~~ Petitioner was given ~~against the applicant in the above mentioned matter~~ by the Supreme Court in the above case on the 10th day of October 1938.

2. The matter in dispute on appeal exceeds LP 500.-

3. An affidavit ~~signed by the applicant and a certificate from a licensed land valuer~~ sworn by Petitioner as to the value of the land in dispute

أظن أنه من الأفضل تقديم زيادة جيد

5/36

is ~~are~~ filed ~~herewith, with this petition~~ herewith.

4. One certified copy of the judgment of the supreme court of appeal is attached ~~here~~ with for the court, with copies for service on Respondents.

5. ~~Four~~ copies of the said judgement also are attached herewith for service on the different respondents.

6. The petitioner is giving notice to the other party respondents of his intention to appeal to the Privy Council ~~thro~~ through the Court by Notice of Motion.

7. The Petitioner prays that copies of this petition with documents attached ~~to~~ be served on each of the respondents

5. Petitioner is desirous of appealing from the said judgment to His Majesty's Privy Council.

It is accordingly prayed that leave to appeal to His Majesty in ~~the Privy~~ Council may be granted by this Court to Petitioner subject to all conditions as to security or otherwise as this Court may see fit to impose ~~such terms as this Court may deem proper~~.

It is further prayed that execution of this judgment be ~~suspended~~ stayed pending the result of this appeal to His Majesty in ~~the Privy~~ Council.

Counsel for the Petitioner.

In the Supreme Court
Sitting as a court of appeal
Jerusalem

Privy Council Appeal No .. of 1938

NOTICE OF MOTION

In Civil Appeal No 224/38

Sheikh Mohamad Salah, represented
by his attorney, ~~Henry Cattan and~~ Regit
Germanus, advocate of Jerusalem. Petitioner.

v

1.
2.
3.
4.
all of Et-Tira village, Toulkarem. Respondents.

~~Take~~ TAKE NOTICE that the Court will be moved on ....
the .... day of .... 1938 at ... O'Clock in the ... noon
or so soon after as counsel can be heard, by the above
named petitioner that the application of the petitioner
for leave to appeal, in the above mentioned case,
to his Majesty in Council may be granted and that
the costs of this application be ~~granted to petitioner~~ costs in the cause.

Dated this .... day of ... 1938

~~Sgd. (Henry Cattan)~~

To .....

٢٩/٤/٩

سعادة القاضي الأستاذ هندي أفندي كتبه المحامي المحترم

سلماً وتحياً

اما بعد فقد مضى مدة كنت خلالها منتظراً من نابلس وبالرغم من رجعتي فوجدت برقيتكم المتضمنة طلب التنفيذ وتحويلكم المؤرخ في ٢٩/٤/٦ .
لقد سعيت بما سبق للحصول على تصريح سفر للحضور لطرفكم ولكن لم انل وهذا الحصار الشنيع لم يمكنني من الحضور لطرفكم للتفاهم معكم . ودفع المطلوب لحضرتكم . فأرجو اعتذاركم لنا فيما مضى عن الرد بسبب تغيبي عن نابلس وثقتي ورجائي يجعلني بأن عنقا وانك لا تحيد عن المسؤولية . ولي رجاء ايضاً ان تتكرم ايضاً بتأجيل الاستئناف ولو الى زمن يمكنه معه ان نكون قادرين على السير بكل ما يلزم

effect that the value of the Land in dispute is over £500. 5 copies.

18. Power of Attorney.

Documents to be inserted:

1. Notice to Respondents of intention to appeal to Privy Council.
2. Application for Order to Stay execution.
3. Application for leave to appeal.

List of Documents Contained in this file.

1. Proceedings of Settlement Office - 2 Copies.
2. A Copy of the Decision of S.O. of Tulkarem.
3. S.O.: Refusal to allow leave to appeal to L. Ct.
4. Application for leave to appeal to L. Ct.
5. Application for leave to Appeal granted by L. Ct.
6. ~~Notice~~ Statement of Appeal in L. Ct.
7. Notice of hearing case in L. Ct. Nablus.
8. Medical Certificate of incapacity to appear in Ct. on a/c of sickness.
9. Decree of Land Ct. Nablus dated 21/7/38
10. Judgment of L. Ct. Nablus - 21/7/38
11. Notice of Appeal against appeal Judgment of L. Ct. dated 30/7/38
12. Statement of Appeal 1/8/38
13. Notice of hearing case in Supreme Ct. sitting as a Ct. of Appeal.
14. Cross - Appeal 2/10/38
14b L. Appeal No. 200/33
15. Judgment of Supreme Ct. sitting as a Ct. of Appeal 10/10/38 4 Copies
16. Decree by Ct. of Appeal issued 24/10/38 4 copies
17. ~~L.A. No. 200/33~~ - in Arabic.
18. Affidavits of Muhammad Salah to the

P.C. L.A. No. 12/38

In the Supreme Court
Sitting as a Court of Appeal
Jerusalem

In the Appeal of:

Sheikh Mohamad Salah
through his attorneys Henry Katta
Barister-at-Law and Negib German
Advocate of Jerusalem

Appellant

v

1.
2.
3.
4.

Respondents

Application For Final Leave To Appeal To His Majesty in Council.

Provisional leave to appeal to His Majesty in Council was granted to appellant on the 22nd day of November 1938 on condition that Appellant ~~produce~~ do enter, within two months, into a bank guarantee in the sum of £300 for the due prosecution of the appeal

b) That the appellant do take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within six months of the date thereof.

2. The appellant has complied with the first condition within the prescribed period.

3. The appellant further has prepared the record to be despatched to England and files same hereby for the approval of this Honourable Court.

The appellant therefore prays that, ~~after the said record has been approved by this Honourable Court~~, he be granted Final Leave to appeal to His Majesty in Council

Lh

Counsel for Appellant.

IN THE PRIVY COUNCIL

No. 66 of 1939

ON APPEAL FROM THE SUPREME COURT

SITTING AS A COURT OF APPEAL, PALESTINE

B E T W E E N

SHEIKH MOHAMAD SALAH OF NABLUS (Defendant)

Appellant

- and -

(1) HUSSEIN ABDUL RAHMAN YACOUB
KASSEM: (2) ABDUL KADER EZ ZABN
AHMAD: (3) KHALIL HAMAD MUHAMMAD KASSEM:
(4) MUSLEH KHALIL AHMAD AKPEH

(Plaintiffs)

Respondents

TO

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

THE HUMBLE PETITION OF THE
APPELLANT

S H E W E T H :

1. That on the 14th January 1935 the 1st Respondent, as Plaintiff, submitted a Memorandum of Claim in the Land Settlement Officer's Court, Tulkarm Settlement Area to be registered as entitled to possession of one-half of a certain parcel of Miri land with the trees thereon which said land was more particularly described in the said Memorandum of Claim.

A like claim was submitted by the 2nd Respondent in respect of another parcel of Miri land on the 10th October 1935

A like claim was submitted by the 3rd Respondent in respect of another parcel of Miri land on the 9th October 1935

A like claim was submitted by the 4th Respondent in respect of another parcel of Miri land on the 4th July 1935.

2. That in respect of all these parcels of Miri land the Appellant as Defendant submitted claims to be registered as entitled to possession of the whole of each parcel.

3. That on the 15th November 1937 the Settlement Officer found in favour of each of the Respondents' claims that there was a 'Mugharasa' agreement whereby the Respondent was to get half the land and half the trees thereon, and he decided that each of the said parcels of land should be registered as to

one half share of the land and trees in the name of the Appellant and the other half of each of said parcels and the respective trees thereon should be registered in the name of the Respondent claiming the right to such half share

4. That from this decision the Appellant appealed to the Land Court of Nablus which by its Judgment dated the 30th June 1938 set aside the said decision of the Land Settlement Officer and ordered the cases to be remitted to him to fix the appropriate compensation to be paid to the Respondent in respect of the Mugharasa agreements and to charge such compensation on the respecti parcels of land after such land and the trees thereon had been registered as to the whole in the Appellant's name

5. That from this Judgment the Respondents appealed to the Supreme Court sitting as a Court of Appeal Palestine, and the Appellant cross-appealed against the order as to fixing the compensation to be paid to the Respondents and charging the same on the said land. On the 10th October 1938 the Supreme Court delivered Judgment setting out the Judgment of the Land Court and allowing the appeal with costs and dismissing the cross-appeal with costs.

6. That the Appellant being dissatisfied with the said Judgment of the Supreme Court obtained leave to appeal therefrom to Your Majesty in Council.

AND HUMBLY PRAYING Your Majesty in Council to take this Appeal into consideration and that the said Judgment of the Supreme Court dated the 10th October 1938 may be rever-sed, altered or varied or forfurther or other relief in the premises.

And Your Petitioner will ever pray.

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IN THE PRIVY COUNCIL.

No. of 1939.

ON APPEAL FROM THE SUPREME COURT OF APPEAL OF JERUSALEM, PALESTINE.

BETWEEN:-

Sheikh Mohamad Salah of Nablus. — DEFENDANT. APPELLANT.

AND

1. Hussein Abdul Rahman Yacoub Kassem.
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhamad Kassem,
4. Musleh Khalil Ahmad Akfeh. — PLAINTIFFS. RESPONDENTS.

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RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

Despatched 29th July 1939

TRANSLATION.

Case No. 173, Tira,
Tulkarm Sub-District.

Memorandum of Claim.

Sub-District: Tulkarm.

Village: Et Tira.

No. of Claim. 942.

Reg. Block Name No. 7733.

Provisional Parcel No. 8.

Final Parcel No.11.

1. Name of person in whose favour right to registration is claimed and full address:
   1) Hussein Abdul Rahman Yacoub Kassem of Tira.
   2) Sheikh Mohamad Hassan Salah, of Nablus.

Interest or Share Claimed: ½

2. Category of Land: Miri.

3. Nature of claim : Possession.

4. How acquired:
   Part or share: ½
   Date: 1919.

From whom: 1) Sheikh Mohamad Salah by purchase from Nassir Sahara and being in uninterrrupted possession for a period of 8 years.
2) Nassir Sahara El Akl who was in possession of all of this parcel by himself alone without any disturbance for a period of about 20 years.

Manner of acquisition: 1) 15 years ago I agreed with the said Sheikh Mohamad to plant this parcel with trees so that I may take half of the land and the trees in consideration of my work and the expenses I pay for planting the said land and making it useful for plantation. I planted all of the said parcel and I have been in possession of my half according to the said agreement without any disturbance whatsoever, with the knowledge of the said Sheikh Mohamad. This is my claim.

2) By unregistered purchase from said person who was in possession thereof and by uninterrupted possession for a period of 8 years, nearly, since the date of the said purchase. After that he ceased to have possession of half of this parcel according to the agreement between me and him.

5. Name and Interest of person registered: I do not know whether it is registered in the Land Registry or not.

6. By whom is House and Land Tax paid (State annual amount): I pay tithes for all of my properties in the village in one instalment. During few years, I used to pay also the tax for the half of Sheikh Mohamad.

7. Description of parcel: Planted with vines, trees, apple, olive, apricot trees and eucalyptus.

Boundaries: North: Road;
East : Thrashing floor;
South: Road and parcel 777/20;
West : Parcels 7777 and 7756.

8. Area claimed: 36 dunoms Approximately.

9. Other Rights affecting servitude: None.

10. Is partition desired: None.

11. Charges on parcel or share: None.

12. Supporting documents: None

13. Additional statement or details if any. (If recorded in unofficial Land Book state also village parcel No.... and unofficial Land Book folio No....): Some 15 year ago, I agreed with Sheikh Mohamad Hassan Salah to plant this parcel with trees. The value of the land at that time was cheap. We agreed that I should take half of the Land and the trees in consideration of my labour and expenses. I planted it with trees and the trees gave fruits, and each of us was in possession of his own half. This was with knowledge and under the Supervision of the other party. Neither of us disturbed the other in his possession. We used to lease the fruits and share the income thereof. In some years he used to lease the half belonging to him only. These facts are known by every-body in the village and in the adjoining villages. The value of the land having rison now, the said Sheikh wants to have all the land registered in his name. Whereas I am in uninterrupted possession of this land for a period not less than 15 years, I therefore pray that half of this land with the trees thereon be registere in my name.

14. I Hussein Abdul Rahman Yacoub Kassem of Tira, Tulkarm Sub-District, hereby take oath and swear (or solemnly affirm) that the particulars stated by me in the Memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

Thumb Print of:
Hussein Abdul Rahman Yacoub Kassem.

Read over to signatory and sworn to and signed by him in my presence.

Ihsan Es-Said.
Assistant Settlement Officer.
14/1/35, Tulkarm.

15. We the undersigned, hereby declare that to the best of our knowledge and belief the above statement is true and correct.

SGD.
Mohamad Hassan El Kassem

SGD.
Mohamad Suleiman Beshard.

SGD: Abdul Rahman Abu Hasika,
Members of Committee.

TRANSLATION.

Case No.173 Tira,
Tulkar Sub-District.

MEMORANDUM OF CLAIM.

Sub-District: Tulkarm.
Village: Tira.
No. of Claim: 941.
Reg. Block Name: No.7733.
Provisional Parcel No: 8.
Final Parcel No: 11.

1. Name of person in whose favour right to registration is claimed and full address: Sheikh Mohamad Salah, through Omar Mohamad Salah of Nablus.

   Share claimed: in whole.

2. Category of Land: Miri.

3. Nature of Claim: Possession.

4. How acquired:-
   Part or share: in whole.
   Date: about 1912.

From whom: Nassir Samara El Acle who was in uninterrupted possession of the full area for about 20 years without any disturbance whatsoever.

Manner of acquisition: By unregistered sale from the said person who was in possession, and by sole possession without any disturbance whatsoever since the date of purchase, till these proceedings.

5. Name and Interest of Person registered: I do not know whether it is registered in the Land Registry or not.

6. By whom is House and Land Tax paid (State annual amount): I pay the Tithes for all my property in one instalment.

7. Description of parcel: Planted with vine, apple, fig, apricot, olive trees and evcalyptus after the year 1331.

Boundaries: North: 9 Road.
East : Threshing floor of the village.
South: Parcel 7776/20, Road.
West : Parcel 7777 and parcels56/57.

8. Area Claimed: 36 dunoms nearly.

9. Other Rights affecting sevitude: None.

10. Is Partition desired: None.

11. Charges on parcel or share: No charges.

12. Supporting documents: None.

13. Additional statement or details if any. (If recorded in unofficial Land Book state also village parcel No. and unofficial Land Bookd folio No.): None.

14. I Omar Mohamad Salah as attorney of my father vide a power of attorney registered in the office of the Notary Public, Nablus, hereby take oath and swear (or solemnly affirm) that the particulars stated by me in the Memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

Signature.
Omar Mohamad Salah.

Read over to signatory and sworn to x and signed by him in my presence.

SGD.
Ihsan Es-Said,
Assistant Settlement Officer.
13/1/35.

15. We the undersigned, hereby declare that to the best of our knowledge and belief the above statement is true and correct.

TRANSLATION.

Case No. 316 Tira,
Tulkarm Sub-District.

Memorandum of Claim.

Sub-District: Tulkarm.
Village: Et-Tira.
No. of Claim: 1849.
Reg. Block Name: Dabbit Swedi No. 7776.
Provisional Parcel No: 34.
Final Parcel No: 24.

1. Name of person in whose favour right to registration is claimed and full address: Abdul Kader Zabn Ahmad, Tira.

   Share claimed: 1/2. (claim half of this parcel)

2. Category of Land: Miri.

3. Nature of Claim: Possession.

4. How acquired:
   Part or share: 1/2 share out of this parcel.
   Date: 1919.

From whom: Mohamad Hassan Salah of Nablus who was in sole possession of this parcel without any disturbance for a period exceeding 15 years.

Manner of acquisition: About 16 years ago I agreed with Mohamad Salah to plant this parcel with trees and that I should take half of it in consideration of my labour. I started work and planted this parcel with different kinds of trees. Relying on the said agreement and according to th custom of our village I have been in possession of half of this parcel without any disturbance for a period of 16 years nearly.

5. Name and Interest of person registered: I do not know in whose name is registered.

6. By whom is House and Land Tax paid (State annual amount): I pay tithes and werko for half of this parcel.

7. Description of parcel: Land planted with vines, fig and apple trees prior ~~xxxx~~ to the year 1331 Hejira.

Boundaries: North:)
East :) According to plan.
South:)
West :)

8. Area Claimed: Whatever the Area might amount to.

9. Other Rights affecting servitude: None.

10. Is Partition desired: None.

11. Charges on parcel or share: No charges.

12. Supporting documents: None.

13. Additional statement or details if any. (If recorded in unofficial Land Book state also village parcel No. and unofficial Land Book folio No.): About 16 years ago I agreed with Mohamad Hassan Salah of Nablus to plant this parcel with trees. I planted it with different kinds of trees. According to the said agreement I have been in possession of this parcel since 1919 until the present date without any disturbance whatsoever. At the date of registration the said Mohamad Hassan Salah made a false oath and claimed all this parcel. I pray the Court to give the judgment that it deems to be just.

14. I Hussein Abdul Rahman Yacoub Kassem of Tira-Tulkarm Sub-District, hereby take oath and swear (or solemnly affirm) that the particulars stated by me in the Memorandum of claim are true and correct and that all information affectin the validity of my claim is truly set forth therein.

Thumb Print of:

Abdul Kader Zabn Ahmad,
Tira,
10.10.935.

Read over to signatory and sworn to and signed by him in my presence.

Ihsan Said.
Assistant Settlement Officer,
10.10.935.

15. We the undersigned, hereby declare that to the best of our knowledge and belief the above statement is true and correct.

(SGD) Member of Committee.

(SGD) Member of Committee.

TRANSLATION.

Case No. 316 Tira,
Tulkarm Sub-District.

Memorandum of Claim.

Sub-District: Tulkarm.
Village: Et-Tira.
No. of Claim: 1848.
Reg. Block Name: Dabbit Swedi No. 7776.
Provision Parcel No: 34.
Final Parcel No: 24.

1. Name of person in whose favour right to registration is claimed and full address: Sheikh Mohamad Hassan Salah, Nablus.
   Share Claimed: in whole.

2. Category of Land: Miri.

3. Nature of Claim: Possession.

4. How acquired:
   Part or share: in whole.
   Date: 1905.

From whom: Nasser Samara Acle who was in sole possession of this parcel without any disturbances for a period exceeding 30 years.

Manner of acquisition: By ancient purchase and by uninterrupted sole possession and without any disturbance for a period exceeding 30 years.

5. Name and Interest of Person registered: I do not know in whose name it is registered.

6. By whom is House and Land Tax paid (State annual amount): I pay worko and tithes for this parcel.

7. Description of parcel: Land planted with vines, fig and apple trees subsequent to the year 1331 Hejira.

Boundaries: North: Parcel 33, Road.
East : " 39.
South: " 35, Road.
West : " 20.

8. Area claimed: about 28 dunoms.

9. Other Rights affecting servitude: None.

10. Is Partition desired: None.

11. Charges on parcel or share: No charges.

12. Supporting documents: None.

13. Additional statement or details if any. (If recorded in unofficial Land Book state also village parcel No. and unofficial Land Book folio No.): This parcel used to be the property of Nasser Samara Acle who was in sole possession without any disturbance for a period exceeding 30 years. In 1905 I bought this parcel from Nasser Samara Acle after ascertaining that no minors were interested in it. I have been in sole possession of this parcel without any disturbance whatsoever for a period exceeding 30 years. My possession does not conflict with the right of anybody else.

14. I Hussein Abdul Rahman Yacoub Kassem of Tira-Tulkarm Sub-District, hereby take oath and swear (or solemnly affirm) that the particulars stated by me in the Memorandum of claim are true and correct and that all information affecting the vlidity of my claim is truly set forth therein.

Signature of:

Sheikh Mohamad Hassan Salah.

Read over to signatory and sworn to any signed by him in my presence.

I. Khalidi,
Assistant Settlement Officer,
10.10.1935.

15. We the undersigned, hereby declare that to the best of our knowledge and belief the above statement is turue and correct.

(SGD) (SGD)

Member of Committee. Member of Committee.

Tira, 10.10.935.

TRANSLATION.

Case No. 317 Tira,
Tulkarm Sub-District.

Memorandum of Claim.

Sub-District: Tulkarm.
Village: Et-Tira.
No. of Claim: 1851.
Reg. Block Name: Dabbit Swedi No. 7776.
Final Parcel No: 25.
Provision Parcel No: 35.

1. Name of person in whose favour right to registration is claimed and full address: Khalil Hamad Mahmud El Kassem.

   Share claimed: 1/2; I claim 1/2 share out of 1 share in this parcel.

2. Category of Land: Miri.

3. Nature of Claim: Possession.

4. How acquired:
   Part or share: 1/2 of this parcel.
   Date:

From whom: Mohamad Hassan Salah who was in possession of this parcel without any disturbance for a period exceeding 15 years.

Manner of acquisition: About six years ago I agreed with Mohamad Hassan Salah to plant this parcel with trees and that I should take half of it in consideration of my labour. I started work and planted this parcel with different kinds of trees.
Relying on the agreement entered into between us, I was in uninterrupted possession of 1/2 of this parcel for a period of 6 years and I am still in possession thereof.

5. Name and Interest of Person registered: I do not know in whose name it is registered.

6. By whom is House and Land Tax paid (State annual amount): I pay werko and tithes for half of this parcel.

7. Description of parcel: Land planted with vines, fig and apple trees subsequent to 1331 Hejira.

Boundaries: North:)
East :) According to plan.
South:)
West :)

8. Area claimed: Whatever the area might amount to.

9. Other Rights affecting servitude: None.

10. Is Partition desired: None.

11. Charges on parcel or share: There are no charges on this parcel.

12. Supporting documents: None.

13. Additional statement or details if any. (If recorded in unofficial Land Book state also village parcel No. and unofficial Land Book folio No.): About 6 years ago I agreed with Mohamad Hassan Salah of Nablus to plant this parcel with trees. I planted this parcel with different kinds of trees. Relying on the agreement entered into between us I was in possession of half of this parcel without any disturbance for a period of six years. I have been in possession of this half since 1921 up till the present

date. At the time of registration, the said Mohamad Hassan Salah made a false oath and claimed all this parcel, I therefore pray this court to give the judgment that it deems to be just.

14. I Hussein Abdul Rahman Yacoub Kassem of Tira Tulkarm Sub-District, hereby take oath and swear (or solemnly affirm) that the particulars stated by me in the Memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

Thumb Print of:
Khalil Hamad Mahmud El-Kassem
Et-Tira,
9.10.935.

Read over to signatory and sworn to and signed by him in my presence.

Ihsan Es-Said,
Assistant Settlement Office.
9.10.35.

15. We the undersigned, hereby declare that to the best of our knowledge and belief the above statement is true and correct.

(SGD) (SGD)

Member of Committee. Member of Committee.

9.10.35.

TRANSLATION.

Case No. 317 Tira,
Tulkarm, Sub-District.

Memorandum of Claim.

Sub-District: Tulkarm.
Village: Et-Tira.
No. of Claim: 1850.
Reg. Block Name: Dabbit Swedi.
Final Parcel No: 25.
Provisional Parcel No. 352

1. Name of person in whose favour right to registration is Claimed and Full Address: Sheikh Mohamad Hassan Salah.

   Share claimed: In whole.

2. Category of Land: Miri.

3. Nature of Claim: Possession.

4. How acquired:
   Part or share: in whole
   Date: 1905.

From whom: Nasser Samara Acle who was in sole possessbn of this parcel without any disturbance for a period exceeding 30 years.

Manner of acquisition: By ancient purchase and by being in sole possession without any disturbance whatsoever for a period exceeding 30 years.

5. Name and Interest of Person registered: I do not know whether it is registered in the Land Registry or not.

6. By whom is House and Land Tax paid (State annual amount): I pay tithes and werko for this parcel.

7. Description of parcel: Land planted with vines, fig and apple trees subsequent to 1331 Hejira.

Boundaries: North: Parcel 34.
East: Parcel 37,39.
South: Parcel 36.
West: Parcel 7733 and a road.

8. Area claimed: 29 dunoms nearly.

9. Other Rights affecting servitude: None.

10. Is Partition desired: None.

11. Charges on parcel or share: No securities on this land.

12. Supporting documents: None.

13. Additional statement or details if any. (If recorded in unofficial Land Book state also village parcel No. and unofficial Land Book folio No.): This parcel was left by Nasser Samara Acle who was in sole possession thereof without any disturbance for a period exceeding 30 years. In 1905 I bought this parcel from Nasser Samara Acle and I ascertained that there were no minors interested in this parcel. My possession thereof does not conflict with the right of anybody else.

14. I Hussein Abdul Rahman Yacoub Kassem of Tira-Tulkarm Sub-District, hereby take oath and swear (or solemnly affirm) that the particulars stated by me in the Memorandum of claim

are true and correct and that all information affecting the validity of my claim is truly set forth therein.

Signature of:
Sheikh Mohamad Salah.
Tira, 8,10,1935.

Read over to signatory and sworn to and signed by him in my presence.

Ihsan Es-Said,
Assistant Settlement Officer,
8.10.1935.

15. We the undersigned, hereby declare that to the best of our knowledge and belief the above statement is true and correct.

(SGD) (SGD)

Member of Committee. Member of Committee.

8.10.35

TRANLATION.

Case No. 319 Tira,
Tulkarm Sub-District.

Memorandum of Claim.

Sub-District: Tulkarm.
Village: Et-Tira.
No. of Claim: 1853.
Reg. Block Name: Dallit Es-Sweidi 7776.
Provisional Parcel No. 36.
Final Parcel No. 26.

1. Name of person in whose favour right to registration is claimed and full addreds: Mosleh Khalil Ahmad Akefeh, Et-Tira.

   Share claimed: 1/2.

2. Category of Land: Miri.

3. Nature of Claim: Possession.

4. How acquired:
   Part or share: 1/2 of this parcel.
   Date: 1920.

From whom: Mohamad Hassan Salah of Nablus who was in uninterrupted possession of this parcel for a period exceeding 15 years.

Manner of acquisition: 15 years ago I agreed with Mohamad Hassan Salah to plant this parcel with trees and take half of it in consideration of my labour. I began the work and planted this parcel with different trees. According to agreement and usage I was in possession of half of this parcel without any disturbance for a period of 15 years and I am still in possession.

5. Name and Interest of Person registered: I do not know in whose name it is registered.

6. By whom is House and Land Tax paid (State annual amount): I pay werko and tithes for half of this parcel.

7. Description of parcel: Land planted with vines and fig trees after the year 1331 Hejira.

Boundaries: North:
East : According to map
South: " " "
West : " " "

8. Area claimed: Whatever the Area may be.

9. Other Rights affecting servitude: None.

10. Is Partition desired: None.

11. Charges on parcel or share: No charges.

12. Supporting documents: None.

13. Additional statement or details if any. (If recorded in unofficial Land Book state also village parcel No. and unofficial Land Book folio No.): About 15 years ago I agreed with Mohamad Hassan Salah of Nablus to plant this Land with trees. I planted this land with different kinds of trees. I started the work and planted this land on the bases of the agreement made between us. I have been in adverse possession of half of this land for a period of about

15 years without opposition of any kind. I am still in possession of the half planted with trees since 1920 A.D. to the date of this claim and on registration the said Mohamad Hassan Salah appeared and gave a false oath and claimed the whole of this property. I, therefore, pray the court to declare what it deems just and equitable in this case.

14. I Hussein Abdul Rahman Yacoub Kassem of Tira-Tulkarm Sub-District, hereby take oath and swear (or solemnly affirm) that the particulars stated by me in the Memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

Thumb Print of:
Musleh Kalil Ahmad Akfe.

4.7.35

Read over to signatory and sworn to and signed by him in my presence.

I. Khalidi,
Assistant Settlement Officer,
Tulkarm
4.7.35.

15. We the undersigned, hereby declare that to the best of our knowledge and belief the above statement is true and correct.

Members of Committee.

TRANSLATION.

Case No. 319 Tira,
Tulkarm Sub-District.

Memorandum of Claim.

Sub-District: Tulkarm.
Village: Et-Tira.
No. of Claim: 1852.
Reg. Block Name. Debbit Es-Sweidi No.7776.
Provisional Parcel No. 36.
Final Parcel No. 26.

1. Name of person in whose favour right to registration is claimed and full address: Sheikh Mohamad Salah of Nablus.

   Share Claimed: In whole.

2. Category of Land: Miri.

3. Nature of Claim: Possession.

4. How acquired:
   Part or share: In whole.
   Date: 1905.

From whom: Nasser Samara El Acle who was in sole possession without any disturbance for aperiod exceeding 30 years.

Manner of acquisition: ancient purchase and by sole possession without any disturbance whatsoever for a period exceeding 30 years.

5. Name and Interest of Person registered: I do not know in whose name it is registered.

6. By whom is House and Land Tax paid (State annual amount): I pay the werko and tithes for this parcel.

7. Description of parcel: Land planted with vines, fig and apple trees before the year 1331 Hijira.

Boundaries: North: Parcel 35.
East : Parcel 7775.
South: Parcel 7757.
West : 20/Road.

8. Area claimed: About 37 dunoms.

9. Other Rights affecting servitude: None.
   (a) Servitude to which the parcel is subject: None.
   (b) Servitude over other land enjoyed by the Parcel: None.

10. Is Partition desired: None.

11. Charges on parcel or share: No charges.

12. Supporting documents: None.

13. Additional statement or details if any. (If recorded in unofficial Land Book state also village parcel No. and unofficial Land Book folio No.): This parcel used to be the property of Nasser Samara Acle who was in uninterrupted possession for a period exceeding 30 years. I bought this parcel in 1915 and I was in sole possession without any disturbance for a period exceeding 30 years. When I bought this parcel I ascertained that there were no minors. My Possession thereof does not conflict with the right of anybody else.

14. I Sheikh Mohamad Hassan Salah of Nablus, hereby take oath and swear (or solemnly affirm) that the particulars stated by me in the Memorandum of claim are true and correct and that all information affecting the validity of my claim is truly set forth therein.

(SGD) Mohamad Salah,
Assistant Settlement Officer.

Read over to signatory and sworn to and signed by him in my presence.

Ihsan Said
Assistant Settlement Officer,
Tulkarm.
3/7/1935.

15. We the undersigned, hereby declare that to the best of our knowledge and belief the above statement is true and correct.

(SGD) (SGD) (SGD)

Members of the Committee.

Proceedings of Settlement Officer
in case No. 173,316,317,319/Tira.

At Tira, 2.11.37. Present: Plaintiff. Defendant in person. Plaintiff states, on oath:- Parcel was given to me by defendant on mugharasa agreement 18 years ago. I have three witnesses but no paper. Witnesses are Sai'd as Sai'd, Mohammad Bishara and Ahmad al 'Iraqi, all of Tira. They were present at the agreement-verbal: Made in Tira in home of 3rd witness. I started ploughing there and then and planted trees - 'Anab and tuffah and tin. I planted the whole parcel.. The trees are there now and bearing fruit. I am still getting ⅓ produce and I pay the tithes. Defendant is stronger than I, so he gave me half produce of trees and not half land. I produce 3 revenue receipts (Exhbs. A), for years' 35, '36, and '37. Previous ones were lost. I have other lands in Tira - 5 or 6 dunums. Exhibits A are LP.1.345. I looked after the trees and spent money on them. Defendant never touched the trees - he is from Nablus and he only comes here at time of produce distribution. Settlement Office calls defendant. His son, 'Umar, speaks for him. (General Power of Attorney examined). Sworn. States: Claim of Plaintiff imaginary. The person who spent on trees was defendant at time of preparing land for cultivation. Man through whom labourers get their money was plaintiff. The agreement between plaintiff and defendant was that plaintiff should act as wakil to look after the property. No written agreement. Verbal - 8 or 9 years ago. I remember. It was then the trees were planted - not all in same year, but first were planted 8 or 9 years ago. In consideration of work of plaintiff he was to get ⅓ produce only. From then to now I, as wakil for defendant, came and looked after trees and land to give ⅓ to plaintiff provided he looked after trees and land. Defendant paid for the trees and for their upkeep until they bore. Most of the trees came from our grove in Qalqilia. The vines cost nothing. After the trees came into bearing, costs were paid by plaintiff but there really were none. It is wellknown in the village that the facts are as stated. Exhibit A concern the land in question. The man on the land paid,

I suggest that Exhibits A - money involved - was paid by my father. This is my land andI did pay tithes. I have not got receipts. I had many receipts. In 1936 our house was demolished and everything was destroyed. That is the house near the railway that you (Settlement Officer) blew up in 1936.

Settlement Officer calls mukhtar, Muhammad Jundiya. Sworn. States: I know this parcel. Exhibits A are the receipts concerning this land. Receipts do not show that man is necessarily the owner. All the tax on the parcel is paid by plaintiff. Exhibits A represent all the tax. Plaintiff has been paying the tax regularly since the taldmis. Before that, I don't know anything about it. As mukhtar, apart from tax receipts, I don't know the exact points of the affair. The traditional agreement in the village is the mugharasa, but there may have been an exception in this case.

Settlement Officer calls Muhammad Suleiman, member Village Settlement Committee. Sworn. States:- I signed the claim of plaintiff. I signed it because I believed it to be a proper claim. At a certain time, Ahmad al 'Iraqi and Sa'id as Sa'id 'Iraqi and Sheikh Mahmud al 'Iraqi and I were together in the house. Plaintiff was then ploughing a certain plot with melons. Then defendant said to plaintiff "I want to plant this plot with trees and if you are unable to do it I will find somebody else who will". Then they agreed and plaintiff took it to plant it. The agreement was that plaintiff should plant trees and get 1/2 land and trees. This is the habit in the village. That was after the Occupation - not long after. Defendant was just visiting the place. Plaintiff planted the trees - I don't know when he got the trees - he had other karum, and tin and tuffah also. I also know that plaintiff spent money and cared for trees until they bore fruit. They bore fruit about 10 years ago. At survey for settlement defendant said when plaintiff claimed 1/2, "Only 1/2 trees and fruit are yours and not land."

(Settlement Officer. In practice, ownership of 1/2 land would not matter so long as it was all planted.)
There was no crop except the trees, except when trees were young. Plaintiff did that.
Defendant's Wakil asks:- At the time of agreement, had any other agreement already taken place ? No - at that time it was begun, as I said. The agreement was a mugharasa - the ordinary one - habitual. No written agreement, as each side should have a copy if one was made. I don't know whether any other person asked to have the trees. Agreement was in house of 'Iraqi.
Settlement Officer calls 'Abd ar Rahim al Kaskiya, member Village Settlement Committee. Sworn. States:- I signed claim of plaintiff because I beleive it to be correct. I have cows and I take them there. Once I met plaintiff working there. He said he had made an agreement with defendant to plant the land on mugharasa agreement. That was after Occupation - may be 25 years ago. The age of the Tin and Tuffah trees is about 15 yeas and they are all in full bearing. I was not present at time of agreement. I had the knowledge that I had a previous experience of mugharasa with the mayor of Tulkarem and I took this to be on the same lines. Plaintiff actually planted the trees and he got the plants from his own Karm or neighbours. The price is nothing for small plants. Up to time of bearing plaintiff paid all expenses and he used to buy a cow for LP.10.- to work it. I never heard that defendant reimbursed him. It was the ordinary agreement. Plaintiff says - mazbut.
<u>Questioned by defendant's Wakil:-</u> The plants were brought from the Kurum. The vines cost nothing. He got the apples from his own land or his relatives. We live in the same part of the village and take an interest in each other's work. I don't know that he brought any trees from Qalqilia.
Settlement Officer calls Sa'id as Sa'id al 'Iraqi. Sworn. States:- I know land and parties. Once, defendant was a wasi' to one of my relatives, Mahmud al 'Iraqi. Defendant started

giving away his land to people. My relative, Mahmud, asked me to take a parcel from him. I refused. After that, parcels were in possession of cultivators. As far as I know, this parcel was given by defendant to plaintiff on usual ground, which is cultivating trees for 1/2 land and 1/2 trees. I do not remember being present at this agreement, exactly, - but I remember being present when one or other was made. They were all mugharasa - 1/2 trees and 1/2 land. This was about 10 - 15 years ago or more. Plaintiff worked on the land - I used to see him.
Settlement Officer: I must now adjourn to tomorrow, 3rd November.

SETTLEMENT OFFICER
TULKARM SETTLEMENT AREA.

3rd November 1937.

At Tulkarm, 3.11.37. Settlement Officer recalls Sa'id as Sa'id al 'Iraqi. Sworn. Examined by defendant's wakil: I received no money from plaintiff for my evidence.
Defendant's Wakil wants to call plaintiff as witness.
Settlement Officer calls plaintiff. Sworn States:- Agreement was mugharasa. I and my family are still working the whole parcel. You did not agree to partition the shares. I only work on this land of yours. When I made the agreement, there were other people who had done agreements 2 years before, - like mine. One is Hassan Kharawi.
Settlement Officer calls Muslih Salah Mansur, member Village Settlement Committee. Sworn. States:- I know this parcel. The land is owned by defendant. Plaintiff planted the trees. Some say it was mugharasa and some say it was not.
(Settlement Officer. Have you any personal knowledge of it ?/ Answer. Yes. In 1931 there came a man and bought produce of trees of this land. The buyer sent son of his brother to take and look after the crop before ripening. While we were sitting in Café in Qalqilia plaintiff came and said to defendant "I have more right to buy the fruit than any foreigner". Defendant said "I have already agreed to sell the fruit and "Khalass"- and you have the trees and I can't change my word". At that time man who bought took over the season).

To defendant: After trees were planted, generally the man who cultivates, pays or makes the amount with his lessor. At time of takhmis, this land was shown in both plaintiff's and defendant's names. Usually the possessor has his name shown in the tithes. After takhmis, the owner's name is shown as paying tax. There are different arrangements about raghrassa. Sometimes, 1/3, 1/4 and so on. I was not present but it is said that it was ½ the produce, - no half of the trees. I was not a mukhtar. There are generally documents in case like this.

(Settlements Officer asks questions. Don't you think it right that you should have a written agreement yourself with plaintiff for his connection with the land ? - There would be no necessity for it.

There is no relation between Mohamad Beshara who signed plaintiff's claim and plaintiff. Hasan Kharawi was cultivating lands on an agreement with you, same as other people. He worked some time until he got old and then left and you took the land from him. He planted the trees and I don't know what he took. I don't know if it is the same agreement as this. Today Kharawi told me he used to get ½ the produce and that he left when he could not work any longer.

Settlement Officer. Why don't you call Kharawi as a witness ? I heard he was given LP.5 to go away.

(Questioner wants to ask witness about his evidence in a Court case : Settlement Officer: Where is the judgment ? I havent got it. Settlement Officer: Then I cannot have evidence connected with it. Settlement Officer: Case is now adjourned to Saturday, 6th November to be heard with 318 and 316.

SETTLEMENT OFFICER
TULKARM SETTLEMENT AREA.

3rd November 1937.

Hearing resumed at Tira, 6.11.37. Present Plaintiff. Wakil of defendant.

Settlement Officer calls Ibrahim Nasrallah (3rd witness of defendant) Sworn. States: I know this parcel. Your father came to the place of Mahmud 'Iraqi, about 10 years or 11 years ago. I

don't remember whether it was winter or summer. Defendant was asked by plaintiff to give him this land to plant, for ½ land and ½ trees and defendant refused. Mahmud Ibrahim el 'Iraqi, 'Abd ar Rahim as Sa'id were there. I don't know whether Muhammad Bishara was there. I know all these people well.

Examined by Settlement Officer. Plaintiff planted the trees in the same year, part, and part after. Defendant agreed to give plaintiff on 1/2 the produce and then plaintiff planted. (Settlement Officer. You said above you knew nothing more than you stated). I was not present when they did come to an agreement. Next witness not present.

Yusuf Mahmud Mansur called. Sworn. States:- I know this parcel. In 1931 we were at the Railway Station at Qalqilia. Defendant came and leased his share in this land to Muhammad Abu Radi - his share was one half, half the trees, I mean. Then Abu Radi sent son of his brother to the land and after 2 hours Abu Radi and plaintiff came back to the Station. Plaintiff said to defendant: I have priority right to have this rented me, - meaning 1/2. Defendant said: I have already decided to let Abu Radi have 1/2 and I can't go back on my word. You have only half the fruit. That is all.

Settlement Officer: Hasan Kharawi has not come. Defendant suggests he was given some money to stay away and says he wants him summoned to give evidence about a parcel which he says is exactly like this.

Settlement Officer decides to take now cases 316, 317, 319,- same thing.

Present: Plaintiffs in all 3 cases, personally. Wakil of defendant (same in all cases.)

Plaintiffs state: Plaintiff in case 319 has exactly the same story as plaintiff in these proceedings.

Plaintiff in case 319 states:- (On oath). 15 years ago, after plaintiff in case 173 made his agreement, (same year) I made my agreement on the same basis. I asked Husein about his agreement and I decided to have the same kind of one. It was

at the station of Qalqiliya, 15 years ago about. I don't remember that there was anybody else there. I made it with defendant in person and I planted the trees - apples, figs and grapes. 2 or 3 years it took to plant the whole parcel. I got the trees from my father's property. Since then I have looked after the whole land and have taken 1/2 produce.

Settlement Officer calls plaintiff in case 316. Sworn. States:- Defendant used to come to Tira. He gave me the land on mugharasa agreement - 1/2 land and 1/2 trees - according to custom. That was before the agreement in case 173 and 319,- one year after Occupation. At the agreement, were present Ahmad al 'Iraqi, 'Abd ar Rahim as Sa'id (dead) Sa'id as Sa'id, in house of Ahmad al 'Iraqi. I planted trees there and then - apples, mish-mish, pomegranates, figs - I got them from the people of the village - we all give one another these things. Ever since then I have cultivated it and taken 1/2 the produce and 1/2 this land. Besides this, I have no land in the village, (Verified - some land he had was sold 7 and 4 years ago). I produce tithe receipts date 1937, 35, 31, 32, 30 - Exhibits A in case 316.

(Settlement Officer calls tithe committee members and verifies that these receipts are for this land.)

Plaintiff continues: I first knew defendant didn't want to give me my proper 1/2 at Settlement. Before that, the agreement I stated was understood.

Settlement Officer calls plaintiff in case 317. Sworn. States:- Only 10 or 11 years ago I took this parcel. I took it just the same as the others did and according to custom. I was with Mahmud al 'Iraqi - he is supposed to be defendant's agent. His brother, Ahmad, was there also - and Sa'id as Sa'id. (They are all relatives.) Same year I planted apples, figs and vines. Many lands in the village have apples - they are good. I got the trees from 'krâm an Nas' I first found out defendant didn't want to stick to his agreement, at Settlement.

Defendant's wakil states, on oath:- Case 312. In first case as mentioned, claim is imaginary. Trees are as proved to the Court.

Most were taken from our orange grove and also he supplies expenses of working the ground. Figs and grapes cost nothing. Apples were from defendant's orange grove. Expenses of cultivation are practically worthless. There was an agreement- one agreement not for all, but similar. Each should plough the land and the expenses he paid by my client- Plaintiffs were to plant the whole of the land and were to get ½ produce when trees came into bearing, so long as they continued to work. In one case there was no written agreement.

The people who agreed with defendant at the same time approximately and on the same basis were: plaintiff in cases 173,316, Hasan Abu Kharawi (missing witness) and plaintiff in case 319. Hasan's agreement is the same as the others' and after 6 or 7 years or so defendant came to inspect lands and Hasan was sent out of the land for not fulfilling agreement. He had not ploughed between the trees, but had planted them. That is parcel now claimed by plaintiff in case 317 and that is the reason why Khalil's agreement was later.

Settlement Officer calls plaintiff, Case 317. Sworn. States:- There were only some grape-vines on the land when I came to it. Defendant's wakil continues:- Had Hasan made an agreement as they state, it would not have been possible to send him out, and, therefore, so with the others. (Settlement Officer. Not so. you have not proved Hasan's Agreement to have been the same as the others') The non-presence of an agreement is one up for me. (Settlement Officer. The non-presence of <u>your</u> agreement is one down for you). Plaintiffs rely on witnesses and on custom. Proof by verbal evidence in such case is ghair qanuni. These parcels are not registered in the Tabu.

My witness in case 173 was only to prove certain acts and the villagers as a whole will not come forward to give evidence for me. My witnesses in these cases are the same as in 173, & I do not wish to call any others except the infamous Hasan.

Settlement Officer. I have given an order for his appearance under pain of arrest.

Settlement Officer calls plaintiff case 319, on oath. Questioned by wakil for defendant: Nobody was present at our agreement. Wakil for defendant to plaintiff in case 316 (sworn): You never gave me a penny for cultivating the land- expenses. Before planting trees, I planted batteikh - 2 or 3 or 4 years until the trees grew up. Before I planted trees, I planted nothing. To plaintiff in case 317 :(On oath) The parcel was only planted with 'Anab,- perhaps 40 or 50 in the whole parcel. It was all Kharab. Defendant and Mahmud 'Iraqi gave me these parcel. Defendant came and asked me why I hand't planted the parcel with trees - 2 years I planted it. I said the vines are still small and he should see after a year or two. There were ~~[illegible]~~ young apples and figs, etc., as well. He saw the land was not well covered. I was not present at other agreements. Defendant told me the agreement was same as others.

Plaintiff in case 316 says: This parcel originally belonged 1/2 to defendant and 1/2 to Dar Mansour, who gave it to cultivators on same basis as defendant gave to us. I ask that these cultivators be questioned. (Settlement Officer: This is for another parcel and it is not necessary to call witnesses. Plaintiff in case 319 produces Exhibits A - tax receipts. Settlement Officer askes if anybody has got anything to say. No. ~~No~~. Settlement Officer calls Muslih Salah Mansour. Sworn. States:-

(At request of defendant's wakil). Only one thing more - Khalil Hamid's parcel was originally with Hassan Kharawi. I do not know the agreement between them. Hasan planted it with figs and vines. When Hasan went out and Khalil came in, there were figs and vines, - poor trees, worth very little , - mostly bur. Khalil planted fresh trees - figs - and he revived the old vines. Hasan left as he became unable to cultivate - he had no more cattle to work it. If a man does not fulfil the conditions of mugharasa, he leaves the land. It is understood that all the agreements were alike, including that of Hasan.

Settlement Officer recalls Ibrahim Nasr-Allah. (On oath).States:- I only know about case 173 and that Hasan Kharawi had one parcel

for a time and left later. He left as he couldn't work it any longer. I have no further knowledge of these parcels. I understood that all agreements were the same, including Hasan's. Settlement Officer recalls Yusef Mahmoud Mansour. Sworn. States:- I know only about Hasan Kharawi - exactly as other witnesses said. All agreements were most probably the same, including Hasan's. If a bloke fails to carry out his agreement, he gets out. It was understood in the village that Hassan got out because he failed to carry out agreement. Hassan told me his agreement was for 1/2 the trees and Hassan said he agreed on same basis with plaintiff in case 173. The trees are more valuable today.

Hasan Kharawi now arrives. Sworn. States:- I once had a parcel for defendant on an agreement, It is the parcel that Khalil now has. I made the agreement about 15 or so years ago. It was that I should cultivate the parcel and I asked him to agree on 1/2 the land and 1/2 the trees and he refused, saying "I have land which I give on 1/2 trees only" So I made the agreement - there was no conclusive agreement with anybody and we didn't quite know whether we had 1/2 land as well as 1/2 trees - only we thought that the custom would be followed here. So I planted the land - tin and 'anab. Then I could not continue, as I had no cattle. I didn't ask defendant for cattle as the agreement was I should provide them. So I left the land according to our agreement. I heard that Khalil afterwards came there. Questioned by wakil for defendants: I don't remember the place of the agreement. I kept land for 4 or 5 years. Nothing was bearing when I left. Defendant told me to leave and he gave me my expenses for fencing the land. I should not have been able to contiue had you given me the whole land. I told Yusef Mahmud and Musleh Salah exactly what I said now. The Agreement was as I have said. Plaintiff in case 316 asks witness: When I became unable to cultivate, I got LP.12 from defendant, I beleive. Defendant's wakil states: Questions centre round (1) Custom, which only concerns citrus, because of expenses; my client used

to pay tithes. Custom cannot be taken as a law - even the agreement was not on basis of custom. Perpetual partnership cannot be except in marriage. (Settlement Officer: Not even then) There was a similar case in Qalqilia. (2) Law of proprietorship. Settlement Officer adjourned case for decision, for reading in village on 8.11.37.

6th November, 1937.

SETTLEMENT OFFICER
TULKARM SETTLEMENT AREA.

COPY.

Cases 173, 316, 317, 319/Tira.

Final Parcels Nos. 7733/11,7776/24,25,

Case 173.
Case 316.
Case 317.
Case 319.

Plaintiffs : Husein 'Abd ar Rahman Ya'qub Qasim.
'Abd al Qadir Zabn Ahmad.
Khalil Hamad Mahmud al Qasim.
Muslih Khalil Ahmad abu 'Akafa.

Defendant : Muhammad Hasan Salah.

Decision of Settlement Officer,
Tulkarm Settlement Area.

The record of proceedings in these cases is found in No. 173/Tira. The cases are alike, and concern plaintiffs' allegations that, some 15 years ago (in case 317/Tira, 8 or 10 years ago) defendant handed over the parcels to them, one to each, on a "Mugharasa" agreement whereby plaintiffs were to plan the land with fruit trees, maintain them in good condition, pa all expenses of cultivation, and in return receive one half th land and one half the trees upon it. Defendant maintains that there was never any such agreement, that plaintiffs agreed to cultivate the trees and look after the plantations in return for one half the produce of the trees only, and that defendant was to have borne, and did bear, all expenses in connection with the work, other than, of course, the labour of plaintiffs.

There was no "Mugharasa" agreement in writing. There was no agreement such as defendant cites in writing. In that matter, the parties areequally to blame.

Defendant's contention is that plaintiffs' tale is entirely imaginary, and that the plea of local custom in suppo of their claim cannot establish their case. Nor, he states, can there have been any question of mugharasa because some tim limit would have to be given after which the land and trees would become the property of plaintiffs.

It is true that custom ~~does~~ can not establish a claim of this sort, but the question of a time limit is not so easily disposed of. Conditions being as they were, I see no reason to doubt that plaintiffs were de facto the owners of the half

land and half trees, and it is notorious that the act in law which would settle them in title was not carried out in this or in 9 cases out of 10 of which I have personal knowledge. It is admitted by defendant that the cost of upkeep of the property is very low, and that would account for the ignoring of the time limit if cultivation and expenses by plaintiffs were not to continue, by the agreement, after the trees came into bearing. This aspect of the case corroborates my deductions from the evidence taken.

All witnesses agree that, whatever was the exact agreement, it was similar in all the cases now under review. I decided to hear verbal evidence in support of plaintiffs', as well as defendant's, statements because it is impossible otherwise to decide a matter for which not one paper, except tax receipts, was produced.

There is definite evidence in favour of plaintiffs' story: of one who was present when one of the agreements was made; of another who was present at one agreement, but which he does not remember, and whose inference is that it was the customary "mugharasa"; and of tithe receipts showing that plaintiffs actually paid the taxes, though that by itself establishes nothing. Then there is the man, Hasan Kharewi, whom defendant specially asked should be called. This man originally made an agreement with defendant on the same terms as the others. He had started by asking half the land and half the trees and defendant refused at first, saying that he should have half the trees only. Finally it was arranged (verbally of course) that this man should come in on similar terms to the others, which I believe he did in the genuine understanding that these terms were the customary mugharasa ones. After a few years, he could no longer provide the oxen to cultivate the land, and he was evicted by defendant, also according to the terms of the agreement. When asked by defendant why he should leave the land if he was to have had half, he replied that at that time he was so poor that he could not have accepted all the land had it been offered. Incidentally and

importantly, from this and other evidence emerges the fact that this man was compensated for the fencing he had done around the parcel, by defendant, on his giving it up, or was given a gratuity of LP.12 or so for that or for some other reason. This shows that it was not in the agreements that defendant should pay all expenses of cultivation and maintainance. Defendant's witnesses do not help his case. One relates how defendant sold the produce to another in 1931- i.e. his half share of the produce - and, when plaintiff objected and said he had a better right to it than any "foreigner", was told he had half the trees. The same witness says that at the takhmis the land was shown in both defendant's and plaintiffs' names. The second witness was not present at the agreement, and only knows that defendant once refused to give one of the plaintiffs half the land and half the trees. The third witness states the circumstances of the leasing by defendant of half the trees to another and adds that defendant said "You own half the trees" also, and again "You own half the fruit."

Defendant's 4th witness, Hasan Kharewi, has already been mentioned.

The deduction the most likely to be true from defendant's witnesses' statements is that plaintiffs in these parcels owned half the trees. The deduction the most likely to be true from plaintiffs' witnesses and the testimony of independent witnesses and the custom of the village is that there was a mugharasa agreement whereby plaintiffs were to get half land and half trees. Now, it is a fact that at the present time the trees are more valuable than the land. It follows that all the improvement in the land for some 15 years past has been carried out by plaintiffs by their own labour and at their own expense. Defendant was an absentee properietor. The land is not registered in the Tabu in his name. It was cultivated by plaintiffs who paid, at least, part of the taxes, and cultivated under conditions that would prima facie support a claim for a possessory title to the whole land in their favour, had they so claimed. I do not see any excuse for defendant's not having

registered the property in his name. I see no excuse for his omission to execute a deed laying down the terms and privileges of the alleged arrangement with plaintiffs, if only for the consideration that an adverse claim to the land was possible and was, in fact, made.

For these reasons, I find for plaintiffs, and order that each parcel shall be registered in one half share of land and trees upon it in name of defendant and one half of land and trees upon it in the name of the plaintiff, who claims rights in each particular parcel.

Defendant is to pay LP.10.000 hearing fees.

Read to parties in Tira this 15th day of November, 1937.

15.11.37. (Sgd) SETTLEMENT OFFICER,

TULKARM SETTLEMENT AREA.

TRANSLATION.

His Honour The President of the Land Court,
N a b l u s .

Subject:- Application for leave to appeal from the decision of the Land Settlement Officer, Tulkarm.

Cases Nos. 173 Block 7733 Parcel 11.
316 Block 7776 Parcel 24.
317 Block 7776 Parcel 25.
319 Block 7776 Parcel 26.

Sheikh Muhammed Ibn Sheikh Hassan Eff. Salah.
APPLICANT.

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Es Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh, all of Et-Tira village, Tulkarm Sub-District. RESPONDENTS.

On 29.11.37 I was served with the decision of the Land Settlement Officer, Tulkarm, whereby judgment was given in favour of the plaintiffs, ordering the registration of half the parcels in the lands I own and possess, in their names.

Thereupon, and on 3.12.37 I applied to the Land Settlement Officer for leave to appeal from the said decision in accordance with the law. On 22.12.37 I was served with an order of the Land Settlement Officer whereby my application for leave to appeal was refused. I, therefore, file this my application praying that leave to appeal to your honourable court be granted relying on legal reasons and on judgments of the Supreme Court of Appeal.

The plaintiffs allege that I delivered the parcels of land to them by way of "Mugharasa" so that they may become owners of half the land and the trees and I denied this allegation.

Preliminary

1. Will a cultivator who is given land to cultivate for a share of the products be considered as an owner or not ?

2. Will lapse of time run in favour of a cultivator ?

3. Is it permissible to base judgments with regard to four different plots of land in dispute, cultivated at

different times by different plaintiffs, as was admitted by such plaintiffs, on the evidence adduced in one single case ?

4. Is parol evidence admissible to prove an agreement as to ownership based on "Mugharasa" ?

5. Is the evidence of a plaintiff sufficient to establish an alleged agreement ?

(a) The facts of the case are as follows:-

I own certain plots of land situate at At-Tira village Tulkarm Sub-District.

The plaintiffs cultivate the said land with my leave and under my supervision for a share of the products. The expenses for improvements on the said land and for planting it with fruit trees such as fig trees and vines are borne by me as I stated in my evidence before the Land Settlement Officer.

Being the person in legal possession of the said lands, I prayed the Land Settlement Officer to allow me to adduce evidence as to the above mentioned facts but he refused my application and was satisfied with the evidence of the plaintif that they cultivate the said lands by way of "Mugharasa".

(b) The rights of a cultivator are governed by the "Cultivators Protection Ordinance."

(c) Possession and lapse of time do not run in favour of a cultivator because possession which is exercised with consen cannot be regarded as independent and absolute possession. Lapse of time does not run in favour of such possession. Jurists have defined possession as making absolute use of a thing, and a person being in possession of something with the leave of the owner cannot be regarded as an owner, nor can he claim title by lapse of time.

Case No.173, which is one of the above mentioned cases was fixed to be heard on 2.11.37. The plaintiff adduced evidence to prove that there was an oral agreement that he should have half of the land and the trees. The summary of the evidence was that, one witness said that he remembers tha the plaintiff told him a long time ago that he cultivated to

take half of the land and half of the trees, i.e. repeating statement of the plaintiff himself. Another witness said that he remembers some conversation between the litigants to to the effect that such taking was according to custom. This evidence of the plaintiff need not be commented on as the Settlement Officer admitted that it has no legal weight.

The other cases 316, 317 and 319 were fixed to be heard on Saturday, 6/12/37. What happened then was that the Land Settlement Officer asked every plaintiff "thus," Is this case like case No. 173"? and the reply was, "Yes". When they were asked about the evidence they had, they replied that they had no evidence because when the oral agreement was made nobody was present. The Land Settlement Officer then reserved his decision. During the trial I requested to submit my evidence as to my right of possession but my request was refused. The Settlement Officer heard some members of the Settlement Committee as to what they heard about this matter and as to their personal knowledge. They gave evidence to the effect that a "Mugharasa" was in respect of half the trees according to the custom of their village. It was established also that in case of default in cultivating the land and taking proper care of it on the part of a cultivator that would be a reason for driving him out of the land, as such has happened in case No.317. In that case a cultivator Khalil Mohammad El Kassem, by name, had cultivated the land for five years and being in default in cultivating the said land he was driven out of it and the land was delivered again to the plaintiff.

The gist of the decision of the Land Settlement Officer is that it was in accordance with custom and he considered the plaintiffs as being in possession, whereas the evidence which was heard by the Settlement Officer in case No.173 does not support the claim of the plaintiffs. In addition to that the evidence tendered in the said case has no legal weight according to the admission of the Land Settlement Officer.

Besides, plaintiffs admit that they cultivate by way of Mugharasa and in such a case lapse of time cannot run in their favour. I therefore, pray for leave to appeal on the legal grounds hereunder mentioned.

1. The Supreme Court of Appeal in the case of Jurf v. Shihab El-Din decided that a person in possession by way of Mugharasa cannot be considered as having absolute possession and does not acquire any right in the ownership of the land. All the rights of a cultivator are concentrated in a right to claim what he had spent on the land. I shall file a certified copy of this judgment.

2. The Supreme Court of Appeal in Case No. 90/32 (Palestine Law Reports vol. I p. 846) decided that Mugharasa for half the land is a prohibited disposition and that all the rights of a cultivator are concentrated in a right to claim what he had spent on the land in accordance with section 11 of the Land Transfer Ordinance.

I, therefore file hereby this application within the legal time and I shall file additional grounds and certified copies of judgments of the Suprmeme Court of Appeal to show that the decision of the Land Settlement Officer is contradictory to the judgments of the courts in Palestine and contradictory to the decisions of the Land Settlement Officer in cases similar to this.

I therefore pray that I may be granted leave to appeal.

Sgd)
Mohamad Salah
23.12.1937

His Hounour the President of the Land Court, Nablus.

A supplement to my application for leave to appeal against the decision of the Land Settlement Officer of Tulkarm in cases Nos. 173, 316, 317 and 319.

Sheikh Mohammad Ibn Esheikh Hassan Salah. APPELLANT.

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Es Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh, all of Et-Tira village, Tulkarm Sub-District. RESPONDENTS.

On 23/12/37, I filed an application for leave to appeal from the decision of the Land Settlement Officer in the cases above mentioned. As there is an important point decided by the Supreme Court in L.A.20/33(JORF V. SHIHAB ED-DIN), it is therefore prayed that leave to appeal be granted on this important point of Law:

Will lapse of time run in favour of a caltivating possesor, who is authorised so to possess by the owner?

A judgment of the Supreme Court decided the following points:-

1. A cultivator by way of Mugharaseh is a trustee.

2. Such possession is a result of an agreement like that of a lease or a mortgage.

3. In such a case, lapse of time does not run against the owner.

Hence the Supreme Court decided in L.A. 90/32, P.L.R. Vol.I.P.846 that in a "Mugharaseh" Agreement providing for half the Land and trees, is a disposition prohibited by Art.11 of the Law of Disposition of Immovable Property, and that the "Mugharis" cultivator has a right only in claiming the amount he has expended on such land. Therefore the Land Settlement Officer is precluded from Ordering that half the land be registered in the names of the cultivators as this is contrary to the judgment of the Supreme Court and the law, especially as the claim of the Plaintiffs was never established in the first place, as this is clear from my first application. A certified copy of the judgment of the Supreme Court L.A. 20/33 is hereby attached.

It is prayed that leave to appeal be granted.

Signed - Mohammad Salah,
of Nablus.
1/1/1938.

Application for leave to appeal (Settlt)No.17/38.

In the Land Court of Nablus,
(Appelate Capacity)

BEFORE:- His Honour Judge L.E.C. Evans, A/President.

In the application of:-

Shiekh Muhammad Shiekh Hasan Salah,
of Nablus. APPLICANT.

v.

1. Hussein Abdel Rahman Yaacoub Kassem,
2. Abdel Kader Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Abu Akafa, all of
Tulkarm. RESPONDENTS.

Application for leave to appeal from the decision of the Land Settlement Officer, Tulkarm, dated 15.11.37 given in cases Nos. 173, 316, 317 & 319/Tira.

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O R D E R .

Whereas the application for leave to appeal is based on proper grounds, it is hereby granted.

GIVEN this 29th day of March, 1938.

(Sgd) L.E.C. Evans

A/PRESIDENT.

In the Honourable Land Court of Nablus,
Sitting as a Court of Appeal.

Subject: Appeal from the judgment of the Land Settlement Officer, Tulkarm, given in Cases No. 173, 316, 317 and 319, Tireh village, dated 15/11/37.

Sheikh Muhammad Ibn Sheikh Hassan Salah. APPELLANT

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh, all of Et-Tira village, Tulkarm Sub-District. RESPONDENTS

The Settlement Officer of Tulkarm issued the above dated judgment in the above mentioned cases against me, ordering that half of the land owned by me be registered in the name of each of the respondents. I applied to His Honour the President of the Land Court of Nablus to grant me leave to appeal, and he granted the same to me in dossier No. 17/38. Therefore I hereby lodge this appeal within the legal period, and I submit to your honourable court the following reasons:-

The question is that I own plots of land situated within the boundaries of the lands of Tireh village, in the Tulkarm Sub-District, and I am in possession of them as owner. The Respondents were working on the lands as cultivators for a part of the produce in consideration of their work and ploughing, with my permission and at my disposal, and I paid the expenses of amelioration of the land and of planting the same with fruitful trees such as fig trees vines and the like as I mentioned in the course of the hearing before the Settlement Officer.

1. The Respondents claimed that I handed over to them the plots of land by way of Mugharasa (treeing system) on terms that thereafter they will acquire half the land and half the trees. They have not proved this by lawful or legal evidence, and I denied their claim and I stated that their occupation is to work on the lands and to watch and safeguard them in return for a certain part of the produce. But the Settlement Officer ordered that half the parcels of land and half the trees, the

subject matter of this dispute be registered in the name of the Respondents, in accordance with their claim. This is contrary to law as is set out hereunder.

2. Possession by the Respondents, of the lands and the trees has not been full possession at all, and they themselves admitted that their possession has been by way of Mugharasa. In these circumstances therefore they have been in possession with my permission and consent, and it depended on my approval of their doings. If I want I can let them remain on the land, and if I want I can eject them from it. A planter of trees is not entitled to dispose of or mortgage, or let out, or cultivate, the land, nor is he entitled to erect buildings thereon. A planter cannot be more than a hireling in return for his benefit from a share in the fruits.

3. Possession is defined by jurists as enjoyment of full and absolute benefit from the land. A tenant who is in possession of the land cannot be regarded as being in possession as an owner. This view is supported by the fact that the law does not regard cultivators who have been in possession of the land for hundreds of years as possessors and owners of that land.

4. A planter of trees can leave his work and the owner of the land can eject him from his land, and this has actually taken place in some of these cases, the fact which was proved before the Land Settlement Officer.

5. The Land Transfer Ordinance 1920 and 1921 provides that whoever wishes to carry out a transaction of transfer of land should first obtain the consent of the government in writing. Under Section 11 (1) therefore every transaction of transfer made without obtaining the required consent in writing shall be regarded as null and void, provided that whoever had paid money in connection with a transfer transaction which has been declared null and void may obtain back (recover) what he had paid by bringing a case for the same in the appropriate Court.

6. The Supreme Court, sitting as a Court of Appeal, held in Land Appeal No. 22/33 (Jorf v. Shihab Ed-Din) the following:-

1. Possession of a planter is possession by a trustee.

2. Possession in such a case is tantamount to licensed possession derived from a contract such as a lessee or a mortgage.

3. In such a case prescription cannot run against the other party. Also the Supreme Court, sitting as a Court of Appeal, held in Land Appeal No.9/32, published on page 846 of the Palestine Law Reports by the Chief Justice, ruled that a Mugharasa for half the land and of the trees is a forbidden transaction of transfer by virtue of Section 11(1) of the Law of Disposition of Immovable property (sic). All what a planter can do is to claim the return, to him, of what he had expended on the land. Thus the said judgment of the Settlement Officer is absolutely repugnant to the judgment of the Supreme Court of Appeal. It should be borne in mind that by virtue of Section 27(2) and Section 1 of the Land Settlement Ordinance, the Settlement Officer is bound by legal principle which has been ruled by the Supreme Court of Appeal in its above mentioned judgments, a copy of which was produced with the application for leave to appeal.

Therefore by virtue of Section 57 (2) of the Land Settlement Ordinance, I request that this appeal be heard in open Court, that I be summoned to attend it, that the judgment of the Land Settlement Officer be set aside, and that I be declared to be the sole owner, and by virtue of sub-section (3) of the above mentioned section, I request that an order be given to the effect that the lands in dispute be registered in my name, that a certified copy thereof be served on the Registrar of Lands, Tulkarm, and that the Respondents be ordered to pay all the costs here and in the Court below, and the advocate's fees.

Accept my respect.

(Sgd) Muhammad Salah of Nablus.

APPELLANT.

4. 4. 38

TRANSLATION.

In the Honourable Land Court of Nablus,
Sitting as a Court of Appeal.

Land Settlement Appeal No.17/38.

Statement of reply to the appeal lodged against the judgment of the Land Settlement Officer, Tulkarm Settlement Area, given in Case Files:-

No. 173
316
317
319
Tira Village.

Sheikh Mohamad Sala. APPELLANT

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh, all of Et-Tira village, Tulkarm Sub-District.

RESPONDENTS

On 17/4/38 we were served with the statement of appeal, lodged by the above named Appellant, against the judgment of the Land Settlement Officer, Tulkarm Settlement Area, in the above mentioned case. Whereas the appeal, in the form and on the merits, is inacceptable by law, we hereby present this reply to it requesting that it be dismissed for the following reasons:-

The appellant has not served us with a copy of the judgment of the Land Settlement Officer. Neither has he served us with a copy of his application for leave to appeal, and of the order granting leave to appeal in accordance with the law and procedure. This is an error in the form and calls for the dismissal of the appeal.

2. The Appellant has not adduced a convincing evidence to prove his allegation that we were working on the land in consideration of receipt by us of half the produce - the fruits, of the trees, and it should be borne in mind that such evidence, according to the circumstances of this case, should be a documentary one, particularly that he comes from Nablus and is a stranger to our village and it is presumed that all agreements made by him should have been in writing. Although

this essential evidence is absent, he has not produced oral evidence in support of his contention. The Settlement Officer was not convinced by the evidence of the witnesses adduced by him, and the said officer discovered that they were telling lies and that their statements were contradictory to each other on material points.

3. It was proved to the absolute satisfaction of the Settlement Officer that we have been in possession of the land, in whole, for a period of 15 years, and that we have elected to state the truth in our claim in that we have not claimed ownership of the land in whole, while it is in our power to do so and such a claim on our part, if it had been made, would have been supported by the special and the common laws. But we have limited our claim to one half of the land, and we have admitted of the right of the appellant to one half, in accordance with the prevailing custom and usage which have been respected and enforced in our country in general and at our village in particular, in such matters. It should be borne in mind that Custom is Law, and that that which is recognized by by Custom is tantamount to that which has been stipulated. This our view has been established by all the witnesses called by us who testified according the truth.

4. It is neither just nor equitable nor reasonable that we should work, labour, toil, exert our efforts, energy and deligence and lose a period of some 15 years in clearing, developing, improving and ameliorating this large and wide plot of land and in planting it with trees, and that in return for all the said tiresome, arduous and onerous and long labour, we should only obtain half of the small quantity of fruits, according to the admission of the appellant himself such a thing is unprecedented in any other area. And, it should be borne in mind that we are poor persons and that we own nothing except this personal acquisition which we have earned with the prespiration of our brows which we sweated down on the soil of this land throughout this long period with the anticipation and expectation of acquisition by us of half of it in a definite future. His Worship the Settlement Officer fully realized the

labour which we rendered for this purpose. Whereas he has full power to apply the principles of justice and equity, as provided under Section 10(3), page 853 of the Laws of Palestine by Drayton, of the LandSettlement Ordinance, therefore he applied those principles, and framed his judgment in the proportion of the extensive labour and expenditures and the other circumstances.

5. We developed the land, planted it with trees and made it an orchard throughout all this long period on the basis of the above mentioned arrangement. Thus all our doings have been carried out in good faith based on the custom and the usage which are lawfully capable of execution. His worship the Land Settlement Officer was satisfied with the evidence of our just, unbiased and disinterested witnesses to the effect that such custom and usage are prevalent. After he has been convinced, there can be no delusion.

6. The judgment cited by the Appellant are irrelevant to the issues of our case and are inapplicable thereto. The circumstances of them differ from circumstances of this case. The judgment given by his worship the Land Settlement Officer, dealing at full length with this subject and with all its circumstances and based on many relevant grounds, is sufficient for the dismissal of this appeal.

In view of these vital points and essential grounds, we request in the first place that the appellant be served with a copy of this statement of reply, that the appeal be dismissed and that the appellant be ordered to pay all costs. Please accept our utmost respects.

25/4/38.

Sgd: Abdul Kader ez-Zabn Ahmad,
Sgd: Khalil Hamad Mohamad Kassem,
thumb impression: Musleh Khalil Abd Akfeh,
thumb impression: Hussein Abd Er-Rahman Yacoub.

Settlement Appeal No.17/38.

IN THE LAND COURT OF NABLUS (APPELLATE CAPACITY).

BEFORE: His Honour Judge W. Clive Curry, A/President.
His Honour Judge Muhammad Bey Baradey.

In the appeal of:

Shiekh Muhammad Salah, of Nablus. APPELLANT.

v.

1. ~~Shiekh~~ Hussein Abdul Rahman Yacoub Kassem.
2. Abdul Kader Ez-Zein Ahmad.
3. Khalil Hamad Muhammad Kassem.
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

Appeal from the decision of the Land Settlement Officer, Tulkarm Settlement Area, dated 15th November, 1937, in cases Nos. 173, 316, 317 & 319/Tira.

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J U D G M E N T.

In this case the Land Settlement Officer, after hearing the evidence of the parties and their witnesses, found that appellant handed over the land which was not registered, to the respondents in a "Mugharasa" agreement whereby, in return for the respondents' planting and cultivation appellant's land the respondents become owners of one half of the land and trees. The Land Settlement Officer having heard the witnesses we see no reason for disagreeing with his finding of facts. The Land Settlement Officer as a result of these findings, ordered that one half share of the land and trees upon it should be registered in the name of the respondents. The appellant has appealed on the ground that "Mugharasa" was a void disposition as the written consent of the Government had not been obtained in accordance with section 4 of the Land (Transfer) Ordinance.

Following the judgments in C.A. 90/32, 20/33 and 90/33 we hold that the agreement between the parties in this case was a disposition under section 11 of the Land (Transfer) Ordinance to which the written consent of the Government was necessary and as that consent was not obtained, the agreement

was void but that the respondents are entitled under the aforementioned section to recover the money spent by them in improving the land. Such money should include also remuneration for the respondents' labour as, in our opinion, such money and labour formed the consideration for the void disposition as laid down in Civil Appeal 90/33 (See Goadby on the Land Law of Palestine pp. 141 and 146).

On these grounds and in view of the circumstances of this case we find it would be inequitable and unjust were the respondents to be deprived of the fruits of their exertions and of the money they expended on the land, it being borne in mind that it was solely due to their ceaseless and untiring efforts during a period of nearly fifteen years that the land was converted into a thriving orange grove, while appellant contributed neither money nor labour to the cultivation of this property. We therefore feel that on principles of equity and justice a remedy should be provided for them without their going to the enormous trouble and expence of seeking a remedy by action in the appropriate Court and before the land and trees are registered wholly in the name of the appellant, as in the event of the respondents' having to institute a separate action, especially after they have vacated possession and after the land and trees have been registered in appellant's name, litigation between the parties is liable to be protracted apart from the expense and trouble that would be caused to them, before they are in a position to recover compensation, should they ever be able to do so.

We therefore think that, on the analogy of section 60(2) and (3) of the Land (Settlement of Title) Ordinance, the Settlement Officer may apply such remedy and may fix the appropriate compensation (including money and compensation for labour) and charge such compensation on the Land, after such land and trees have been registered wholly in appellant's name.

The decision of the Land Settlement Officer is therefore set aside and the case is remitted to him to proceed as directed and give a fresh decision. Costs to follow the event.

Given this 30th day of June, 1938.

Sgd. M. Baradey
JUDGE.

Sgd. W. Clive Curry
A/PRESIDENT.

In presence of both parties.

Sgd. W. Clive Curry.

District Court, Nablus
Delivered on 21 Jul. 1938,
In Open Court.

TRANSLATION.

Civil Appeal No.224/38.

In the Supreme Court,
Sitting as a Court of Appeal.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh, all of Et-Tira village, Tulkarm Sub-District. APPELLANTS

v.

Sheikh Mohamad Salah of Nablus. RESPONDENT

Appeal from the judgment of the Land Court of Nablus, sitting as a Court of Appeal, dated 21/7/38 in Settlement Appeal No.17/38.

The Land Court of Nablus, sitting as a Court of Appeal at Tulkarm, quashed the judgment of the Land Settlement Officer given in the above mentioned case.

Whereas this appellate judgment is prejudicial to our rights and is contrary to law, we hereby lodge this appeal against it within the legal period praying that it be set aside and that the judgment of the LandSettlement Officer be confirmed for the following reasons:-

1. The Settlement Officer has full power not to be bound by the letter of the law, and he is entitled to have regard to the principles of justice and equity, in all judgments given by him, as provided for under section 10(8) of the Land Settlement Ordinance. And, he has decided this case of ours in accordance with the principles of justice and equity, and there is nothing in the judgment of the Land Court to indicate that the Land Settlement Officer has gone beyond these principles

2. The Land Settlement Officer has asserted the custom which has been followed at our village in particular and according to which the public have been going in several cases namely: The Land Owner hands over his land to another person to clear and develop it, and after that it will be devided between them in equal shares. There can be no doubt that custom is law. In this agreement there is nothing repugnant to public Order.

It is as if the land owner has sold half of his land in consideration of developing and treeing the whole of it and of expending on it during those many years. If the losses and the expenditures incurred by us on the amelioration and development of this land for theperiod of 15 years be calculated, we will find that they amount to more than the value of the land. Therefore in such a case the Spirit of Section 8 of the Land Courts Ordinance should be applied.

3. Eversince we took over.this land, we have been paying the Government taxes imposed thereon, and the Respondent did not pay a single mil throughout those 15 years at all.

4. We have no other land, and we have exerted considerable labour on this land the fact which has exhausted our strength and it is only just and equitable that the fruit of our labour should not be lost in vain after this long period.

5. For these material reasons, we request that the judgment of the Land Court be set aside and that the judgment of the Land Settlement Officer, which is based on the principles of justice and equity be confirmed, in as much as he felt the facts for himself and judged in the case according to his conscience that justice requires that this should be the judgment.

1/8/38.

Sgd: Abdul Kader Ez Zabn Ahmad,
Sgd: Khalil Hamad Mohammad Kassem,
Thumb impression: Musleh Khalil Ahmad Akfeh,
Thumb impression: Khalil Hamad Muhammad Kassem.

APPELLANTS.

Nablus 2nd October, 1938.

In the Supreme Court sitting as
a Court of Appeal, Jerusalem.

Cross-Appellant

Sheikh Muhammad Salah Landowner-Nablus.

Respondents:

1- ~~Shaikh~~ Hussein Abdul Rahman Yacoub Kasem
2- Abdul Qader Es-Zein Ahmad
3- Khalil Hamad Muhammad Kasem
4- Musleh Khalil Ahmad Akfeh

All cultivators of Tira Village.

Cross-Appeal against C.A. No.224/38.

Judgment was delivered in presence of parties on the 21-7-38 by the Land Court of Nablus, sitting as a Court of Appeal, in L.A. 17/38 from the decision of the Land Settlement Officer, Tulkarm Settlement Area, dated 15-11-37 in Cases No's 173, 316, 317 and 319/Tira. Against the judgment of the Land Court present Respondents lodged their appeal on the 14-9-38. Against present Respondents appeal cross-appellant lodges this cross-appeal.

Facts of the case.

Appellant is the owner of certain parcels of land within the village of Tira. Respondents work on the land as cultivators on the understanding that they are entitled to a share in the produce, while cross-appellant paid the money for improvement of land. Fig trees and vineyards exist on the land.

Respondents claimed before the Settlement Officer that they work on the land in accordance with a mugharasa agreement. The Settlement Officer found in favour of Respondents and ordered registration of half of the land and trees in Respondents name. On appeal by cross-appellant the Land Court Nablus, held that the agreement was void and remitted case to the Settlement Officer ordering him to assess compensation plus labour and charge the land with amount assessed after it being registered in cross-appellant's name. An appeal and cross-appeal were lodged before the Supreme Court.

Grounds of cross appeal.

1. There was no legal evidence before the Settlement Officer from which it could be decided the existence of mugharasa agreement.
Respondents failed to prove and establish their allegations.
2. Cross-appellant was always in possession of lands in dispute while Respondents were never in possession.

3. Respondents claim before the Settlement Officer was one of ownership in accordance with a mugharasa non-existing agreement. As there was no evidence before the Settlement Officer and the Land Court, supporting Respondents claim, he should have dismissed Respondents action.

4. Even if there was sufficient and admissible evidence from which it could be held that such a mugharasa agreement exists (which cross appellant denies) then Sect. 11 of the Land Transfer Ordinance has to be applied.

5. The Land Court erred in Law by remitting the case to the Settlement Officer. Having found that the agreement is void and illegal, it should have ordered the registration of the lands in appellant's name and its jurisdiction should have ended there.

6. The Land Court ordered the Settlement Officer under section 60(2) and 60(3) of the Land (Settlement of Title Ordinance) to assess the appropriate compensation (including money and compensation for labour) and charge such compensation on the land:-

(a) It is to be noted though the parties did not advert to Sections 60(2) and 60(3) of the land Settlement of Title Ordinance; the Land Court has of its own initiative raised them. This procedure is contrary to Law and principles laid down by the judgments of the Court of Appeal. Furthermore parties were disputing ownership and none of them did ask for compensation.

(b) Section 60(2) and 60(3) do neither expressly nor impliedly give such powers to the Settlement Officer. The Settlement Officer's judicial power are defined in Section.10 of the Land Settlement of Title Ordinance.

(c) Such remedy as above mentioned is purely a Civil one and the appropriate Court should deal with such a claim. There are many points of fact and law which arise in the assessment of compensation which have to be established in such cases.

(d) Equity cannot step in, in such cases, as Respondents can seek a remedy under the Statutory Law existing in Palestine, Section 46 of the Order in Council.

7. It is further submitted, that "money" under Section 11 of the Land Transfer Ordinance does not include compensation for labour. It includes money plus interest only.

For the above mentioned reasons it is prayed that the judgment of the Land Court be varied and judgment be given for the registration of lands in dispute in Appellant's name with costs and Advocate fees.

(Sgd) Muhammad Salah.

CROSS APPELLANT.

Case No.224/38 Civil.

In the Supreme Court Sitting as a Court of Appeal.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh, all of Et-Tira village, Tulkarm Sub-District. APPELLANTS

v.

Sheikh Muhammad Ibn Sheikh Hassan Salah. RESPONDENT

In C.A. 224/38.

Rejoinder on behalf of Respondent.

Respondent has been served with a statement of Appeal by appellants on 14.9.38 against the judgment of the Land Court, Nablus, sitting in its appellate capacity in L.A. 17/38 from the judgment of the Settlement Officer, Tulkarm area dated 15.11.37 in cases Nos. 173,316,317 and 319 Tira.

Statement of reply is hereby respectfully made on the following grounds:-

Appellants did not base their appeal on any points of Law as required by section 64(2) of the Land Settlement of Title Ordinance.

Appellants in their statement of appeal deal with the judgment of the Settlement Officer, while this is an appeal against the judgment of the Land Court,and not an appeal against the judgment of the Settlement Officer.

2. Appellants allege in their statement of Appeal that the Settlement Officer is not bound by the wording of Law. Section 10(3) of the Settlement of Title Ordinance states that the settlement officer is bound by the Land Law. The Court of appeal has already held in several judgments, that a Mugharasa agreement is illegal and contrary to Section 11 of the Land Transfer Ordinance.

3. Appellants allegation of having proved before the Settlement Officer the existance of custom is not supported by the evidence produced before the Settlement Officer.

Furthermore certain conditions must be proved by appellants before the courts will give legal effect to it. This, appellants failed to do.

For the above mentioned reasons, it is prayed that the appeal be dismissed with costs, and advocates fees.

(Sgd) Muhammad Salah,

RESPONDENT.

2.10.38

Civil Appeal No.224/38.

In the Supreme Court sitting as a Court of Appeal.

BEFORE:- Mr. Justice Copland, Mr. Justice Khayat and Mr. Justice Abdul Hadi.

IN THE APPEAL OF:-

1. ~~Shaikh~~ Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Qader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh, all of Tira Village.

APPELLANTS (RESPONDENTS)

v.

Sheikh Muhammad Salah.

RESPONDENT (APPELLANT)

Appeal and cross-appeal from the judgment of the District Court of Nablus (Appellate Capacity) dated the 30th of June, 1938.

For Appellants: No. 1-) No. 2-) No. 3-) No. 4-) In person.

For Respondent: Walid Eff. Salah.

J U D G M E N T .

This appeal depends on the value, if any, to be given to an alleged Mugharasah agreement entered into between the parties. We are agreed that there was evidence to support the findings of fact made by the Settlement Officer that there was a mugharasah agreement which was in force for a period of about fifteen years. It is true that a Mugharasah agreement is a disposition within the meaning of the Land Transfer Ordinance but that does not altogether dispose of the question because by section 10 of the Land(Settlement of Title) Ordinance, a Land Settlement Officer is to apply the Land Law in force at the date of the hearing of the action and, at the same time, he is directed to have regard to equitable as well as to legal rights.

Now it is true, as I have said, that a mugharasah agreement is void in law, but in our opinion, it will none the less support an equitable title to the land as between the present parties and we therefore think that the Land Court went wrong in their appeal judgment. As the Settlement Officer

remarked, this land was cultivated by the Plaintiffs (Appellants here) under conditions that would prima facie support a claim for a possessory title to the whole land in their favour, had they so claimed.

That being so, the appeal must be allowed, the judgment of the Land Court is set aside, and the judgment of the Settlement Officer restored. The Appellants will have their costs together with $.4.- travelling expenses.

It follows, of course, that the cross-appeal is dismissed with costs.

Delivered this 10th day of October, 1938.

British Puisne Judge
COPLAND

Puisne Judge
KHAYAT

I agree with the result of this judgment by virtue of theprovisionsof Section 54(b) of the Land (Settlement of Title) Ordinance, Drayton Vol.II, Cap.80.

Puisne Judge.
ABDUL HADI.

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Jerusalem 4th Nov. 1938.

In the Supreme Court,
Sitting as a Court of Appeal,
J e r u s a l e m .

In Civil Appeal No.224/38.

Sheikh Mohamad Salah, represented by his attorney Negib Germanus, Advocate of Jerusalem. PETITIONER

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh,
All of Et-Tira village, Tulkarm Sub-District. RESPONDENTS

Application for leave to appeal to His Majesty in Council from the judgment of the Supreme Court in Civil Appeal 224/38 dated the 10th October, 1938.

The petition of the Petitioner sheweth:

1. That judgment against the Petitioner was given by the Supreme Court in the above case on the 10th day of October 1938.

2. The matter in dispute on appeal exceeds £.500.-

3. An affidavit sworn by Petitioner as to the value of the land in dispute is filed herewith.

4. Five certified copies of the judgment of the Supreme Court of appeal are attached herewith; one for the Court, others for service on Respondents.

5. Petitioner is desirous of appealing from the said judgment to His Majesty's Privy Council.

It is accordingly prayed that leave to appeal to His Majesty in Council may be granted by this Court to Petitioner subject to all conditions as to security or otherwise as the Court may see fit to impose.

It is further prayed that execution of this judgment be stayed pending the result of this appeal to His Majesty in Council

(Sgd) N. G. Germanus

COUNSEL OF PETITIONER.

TRANSLATION.

Security for costs of Appeal to His Majesty in Council

In the Supreme Court
Sitting as a Court of Appeal,
Jerusalem.

Case No. Privy Council Appeal 12/38.

Sheikh Mohammad Salah. APPELLANT

v.

1. Hussein Abdul Rahman Yacoub Kassem,
2. Abdul Kader Ez Zabn Ahmad,
3. Khalil Hamad Muhammad Kassem,
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS.

Whereas the above named appellant has applied to the Supreme Court of Appeal, Jerusalem for leave to appeal to his Majesty in Council from the judgment of the Supreme Court of Appeal, Jerusalem in Civil appeal No.224/38 delivered on 10.10.38, and he was granted leave on 22.11.38 to appeal to his Majesty in Council and was ordered to file a guarantee in the amount of £P.300.

Now, we therefore, the Arab Bank at Jerusalem do hereby promise that we will pay to the above named respondents all and any costs that the appellant may be ordered to pay to them in respect of the said appeal together with any damages or loss caused by the appeal which the respondents may be legally entitled to recover in the event of the appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the Respondents' costs of the Appeal (as the case may be), to the amount of £P.300.

In witness whereof we have hereunto affixed our signatures this 15th day of December, 1938.

(Sgd) Abdul Hamid Shuman.

Seal of the Arab Bank Co. Ltd.

witness Musbah El Kazimi

witness Abdul Rahim Al Sharif.

87/115.

I Notary Public of Jerusalem do hereby certify and attest that on the day of the date hereof before me personally, appeared Mr. Abdel Hamid Eff. Shuman The General Manager of the Arab Bank Co. Ltd. who has been elected as such on 14/10/37 by a special resolution (see Notarial document No. E/133 registered at this office on 23/12/37) A/ who was made known to me by the witnesses Musbah Eff. Kasmi and Abdel Rahim Eff. Sharif of Jerusalem and in my presence and in that of the above mentioned witnesses subscribed his name to this document and acknowledges same.

In witness whereof, I have hereunto set my hand and caused the seal of this office to be affixed hereto this fifteenth day of December, 1938.

D. Shami.

NOTARY PUBLIC JERUSALEM.

Stamp (50) mils.

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PRIVY COUNCIL LEAVE APPLICATION
No. 12/38.
C.A. No. 224/38.

IN THE SUPREME COURT SITTING AS A COURT OF APPEAL.

BEFORE: The Chief Justice, Mr. Justice Greene and Mr. Justice Khayat.

IN THE APPLICATION OF:

Sheikh Mohammad Salah. APPLICANT

v.

1. Hussein Abdul Rahman Yacoub Kasem.
2. Abdul Kader Ez Zabn Ahmad.
3. Khalil Hamad Muhammad Kassem.
4. Musleh Khalil Ahmad Akfeh. RESPONDENTS

Application for final leave to appeal to His Majesty in Council from the judgment of the Supreme Court in Civil Appeal No. 224/38 dated the 10th October, 1938.

FOR APPLICANT : Mr. N. Germanus.

FOR RESPONDENTS: In person.

O R D E R .

WHEREAS by order of this Court dated the 22nd. November, 1938, the Petitioner was granted conditional leave to appeal to His Majesty in Council, subject to the following conditions:-

(i) That the Appellant do enter, within two months, of the date of this Order into a bank guarantee in a sum of £P.300 for the due prosecution of the appeal and the payment of all such costs, as may become payable to the Respondents in the event of the Appellant not obtaining an Order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellant to pay the Respondents' costs of the appeal (as the case may be);

(ii) That the Appellant do take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within six months of the date of this Order;

(iii) That the execution as regards the registration of lands in the names of Respondents be stayed, but as regards the costs the Respondents may apply for execution provided they enter into a security in the amount of costs executed.

AND WHEREAS the Petitioner has fulfilled the said conditions, in that he has filed a guarantee bond for the sum of £.300, as prescribed, and has filed a draft copy of the Record of Appeal intended to be dispatched to England, and has further applied for the settlement thereof, and the parties have appeared before the Chief Registrar of this Court for the settlement thereof, which record has been settled.

NOW THEREFORE the Court orders and it is hereby ordered, in pursuance of Article 21 of the Palestine (Appeal to Privy Council) Order in Council, that final leave to appeal to His Majesty in Council be granted to Petitioner.

GIVEN this 22nd day of May, 1939.

HARRY TRUSTED
CHIEF JUSTICE.

Sgd.M. C. GREENE
BRITISH PUISNE JUDGE.

F. KHAYAT
PUISNE JUDGE.